

United States *Vol 1*
2270
Circuit Court of Appeals

For the Ninth Circuit.

WILSON BROTHERS & COMPANY (Wilson
Bros. & Co.), a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petitions to Review Decisions of the
United States Board of Tax Appeals

FILED

MAY 23 1941

PAUL P. O'BRIEN,

United States
Circuit Court of Appeals

For the Ninth Circuit.

WILSON BROTHERS AND COMPANY, (Wilson Bros. & Co.,) a corporation,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the United States
Board of Tax Appeals.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer to Amended Petition—No. 83397.....	227
Answer to Amended Petition—No. 93668.....	19
Appearances—No. 83397	203
Appearances—No. 93668.....	1
Assignments of Error—No. 83397.....	236
Assignments of Error—No. 93668.....	73
Certificate of Clerk of Board of Tax Appeals —No. 83397	253
Certificate of Clerk of Board of Tax Appeals— No. 83397 and No. 93668.....	198
Decision—No. 83397	231
Decision—No. 93668	68
Designation of Contents of Record on Review —No. 83397 (Board of Tax Appeals).....	251
Designation of Contents of Record on Review —No. 83397 and No. 93668 (Board of Tax Appeals)	196
Designation of Contents of Record on Review (C. C. A. No. 9781) (Circuit Court of Appeals)	200

Index	Page
Designation of Contents of Record on Review (C. C. A. No. 9782) (Circuit Court of Appeals)	255
Docket Entries—No. 83397.....	203
Docket Entries—No. 93668.....	1
Evidence, Revised Statement of the (see “Tes- timony”)—No. 83397 and No. 93668.....	86
Motion for Leave to File Amended Petition With Granted Stamp Thereon—No. 83397.....	206
Motion of Petitioner for Leave to File Amended Petition, With Granted Stamp Thereon— No. 93668	4
Notice of Filing Petition for Review—No. 83397	245
Notice of Filing Petition for Review—No. 93668	81
Opinion, Memorandum—No. 83397 and No. 93668	31
Order From Court for Consolidation of the Record—No. 83397 and No. 93668.....	195
Order From Court for Consolidation of Record —No. 83397 and No. 93668.....	250
Petition, Amended—No. 83397.....	207
Petition, Amended—No. 93668.....	5
Petition for Review With Notice of Filing and Admission of Service—No. 83397.....	232

Index	Page
Petition for Review With Notice of Filing and Admission of Service—No. 93668.....	69
Review:	
Assignments of Error on (No. 83397).....	236
Assignments of Error on (No. 93668).....	73
Petition for (No. 83397).....	232
Petition for (No. 93668).....	69
Statement of Points on (No. 83397) (Board of Tax Appeals).....	246
Statement of Points on (No. 93668) (Board of Tax Appeals).....	82
Statement of Points on (C. C. A. No. 9781) (Circuit Court of Appeals).....	200
Statement of Points on (C. C. A. No. 9782) (Circuit Court of Appeals).....	255
Revised Statement of the Evidence (see “Testimony”)—No. 83397 and No. 93668.....	86
Statement of Points on Review—No. 83397 (Board of Tax Appeals).....	246
Statement of Points—No. 93668 (Board of Tax Appeals)	82
Statement of Points on Review (C. C. A. No. 9781) (Circuit Court of Appeals).....	200
Statement of Points on Review (C. C. A. No. 9782) (Circuit Court of Appeals).....	255
Stipulation of Facts, Excepting Exhibits A and B, to Said Stipulation—No. 83397 and No. 93667	23

	Index	Page
Testimony—No. 83397 and No. 93668.....		86
Exhibits for petitioner:		
3—Petitioner's income tax return for 1932		132
4—Petitioner's income tax return for 1933		142
5—Petitioner's income tax return for 1934		153
6—Statement of Petitioner's cash in banks		165
7—Statement of Petitioner's stock ownership 1/1/32		166
8—Statement of Petitioner's stock ownership 12/31/32		167
9—Statement of Petitioner's stock ownership 12/31/33		168
10—Statement of Petitioner's stock ownership 12/31/33		169
11—Statement of Petitioner's bond ownership		170
18—Petitioner's General Ledger Trial Balances (after closing) 1932-1934		171
19—Petitioner's accounts receivable 1/1/32		175
20—Petitioner's accounts receivable 12/31/32		176

Index	Page
Exhibits for petitioner (cont.):	
21—Petitioner's accounts receivable 12/31/33	177
22—Petitioner's accounts receivable 12/31/34	177
23—Analysis petitioner's accounts re- ceivable from F. A. Wilson.....	178
Exhibits for respondent:	
A—Petitioner's income tax return for 1929	180
B—Petitioner's income tax return for 1930	186
C—Petitioner's income tax return for 1931	191
Witnesses for petitioner:	
Murphy, Thomas	
—direct	115
—cross	129
Wilson, Winfred T.	
—direct	87
—cross	103
—redirect	112
—recross	114

APPEARANCES

For Taxpayer:

A. E. GRAUPNER, Esq.

For Comm'r:

T. M. MATHER, Esq.,

ALVA C. BAIRD, Esq.

Docket No. 93668

WILSON BROTHERS & COMPANY, (WILSON
BROS. AND CO.,) a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1938

May 21—Petition received and filed. Taxpayer notified. (Fee paid).

May 21—Copy of petition served on General Counsel.

June 21—Answer filed by General Counsel.

June 21—Request for circuit hearing in San Francisco, California, filed by General Counsel.

June 25—Notice issued placing proceeding on San Francisco, California Calendar. Service of answer and request made.

1939

Mar. 25—Hearing set May 29, 1939, San Francisco, Calif.

June 6-7—Called 5-28-39. Hearing had before Mr. Disney on merits. Submitted, Motion to consolidate Dockets 83397 and 93668 granted. Stipulation as to the facts filed. Briefs due Aug. 1, 1939; Reply Sept. 1, 1939.

June 24—Transcript of hearing June 6, 1939 filed.

June 24—Transcript of hearing June 7, 1939 filed.

July 6—Motion for leave to file amended petition, amended petition lodged, filed by taxpayer. 7-10-39 granted. 7-11-39 copy served on General Counsel.

July 28—Brief filed by taxpayer.

July 31—Answer to amended petition filed by General Counsel.

Aug. 2—Copy of brief served on General Counsel.

Aug. 3—Copy of answer to amended petition served on taxpayer.

Aug. 29—Reply brief filed by taxpayer.

1940

May 22—Memorandum opinion rendered, Richard L. Disney, Div. 4. Decision will be entered under Rule 50.

June 17—Motion for review by the entire Board, or for reconsideration, filed by taxpayer.

June 20—Computation of deficiency filed by General Counsel.

June 28—Order denying petitioner's motion for reconsideration, entered.

1940

- July 2—Order denying review by the Board, entered.
- July 9—Hearing set July 31, 1940, on settlement. [1*]
- July 22—Consent to settlement filed by taxpayer.
- Aug. 6—Decision entered, R. L. Disney, Div. 4.
- Oct. 31—Petition for review by United States Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.
- Oct. 31—Affidavit of service filed by taxpayer.
- Nov. 1—Proof of service of petition for review filed.
- Dec. 30—Certified copy of order from 9th circuit enlarging time to 2-3-41 to prepare and transmit record filed.

1941

- Jan. 8—Statement of evidence filed by taxpayer.
- Feb. 3—Certified copy of order from the 9th Circuit, extending the time to April 3, 1941, to prepare and transmit record, filed.
- Mar. 11—Agreed revised statement of evidence filed.
- Mar. 11—Statement of points on which petitioner intends to rely filed, with proof of service thereon.
- Mar. 11—Agreed designation of contents of record filed, with proof of service thereon.
- Mar. 14—Certified copy of an order from the 9th Circuit, consolidating Dockets 83397, 93668, filed. [2]

*Page numbering appearing at foot of page of original certified Transcript of Record.

United States Board of Tax Appeals

Docket No. 93668

WILSON BROTHERS AND COMPANY (Wilson
Bros. & Co.), a corporation, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MOTION FOR ORDER GRANTING LEAVE
TO FILE AMENDED PETITION

Now comes the petitioner above-named by its counsel, Adolphus E. Graupner and Louis D. Janin, and moves this Honorable Board to grant petitioner leave to file an amended petition in the above-entitled proceeding, which said amended petition is presented herewith for consideration on this motion.

The foregoing motion is made in order to have the pleadings accord with the proofs submitted at the hearing of this proceeding in San Francisco, California, on June 6th and 7th, 1939, and to comply with the provisions of Rule 6(e) of this Board.

Respectfully submitted,

ADOLPHUS E. GRAUPNER

LOUIS D. JANIN

Counsel for Petitioner.

Dated July 1, 1939.

Granted July 10, 1939.

(Signed) [Illegible]

Member U. S. Board of Tax Appeals.

[Endorsed]: U. S. B. T. A. Filed July 6, 1939.

[Title of Board and Cause.]

AMENDED PETITION

Upon consent of the above-entitled Board to amend the petition in the above-entitled proceeding to conform to the proofs submitted at the hearing thereof and without waiver of right to challenge the constitutionality of any part of any Revenue Act involved in this proceeding or any act of the Commissioner of Internal Revenue or his subordinates, or to object to the jurisdiction of this Board, the petitioner above named hereby petitions for a redetermination of the alleged deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:Aj-RLT-25579-90D) dated March 8, 1938, and as a basis of this proceeding alleges as follows:

1. The petitioner is a corporation duly organized and existing under the laws of the State of Nevada, with its principal office at 1112 Russ Building in the City and County [4] of San Francisco, State of California.

2. The notice of deficiency upon which the petition is based (a copy of which is hereunto attached and marked Exhibit "A") was mailed to the petitioner on March 8, 1938.

3. The asserted deficiency in tax here in controversy is for alleged income taxes for the calendar year 1934, and, as asserted in said purported deficiency notice, in the amount of not more than \$14,-313.88 for said year, including surtax and penalty

for alleged negligence on the part of petitioner in the respective amounts of \$11,017.81 and \$681.61.

4. The determination or proposal of a deficiency as set forth in said notice of deficiency is erroneous in each and every one of the following particulars assigned as errors:

(a) The Commissioner erred in proposing, determining and asserting against petitioner any amount as a deficiency in income tax for the calendar year 1934.

(b) The Commissioner erred in concluding, determining and asserting that petitioner was for the taxable calendar year 1934, subject to the provisions of Section 102(a) of the Revenue Act of 1934, as a corporation formed or availed of for the purpose of preventing the imposition of the surtax or any other tax on its shareholders, or was in any way used to prevent imposition of tax upon any person.

(c) The Commissioner erred in failing to determine the proper adjusted basis for depreciation as of December 31, 1931, with respect to the steamships "Idaho" and "Oregon" and the furniture and fixtures belonging to petitioner and in using an erroneous alleged "cost" as such basis. [5]

(d) The Commissioner erred in disallowing the sum of \$5,211.21 or any portion of the depreciation claimed by petitioner as a deduction from gross income for the taxable calendar year 1934, and in not allowing at least \$2,639.89 depreciation in addition to the amount claimed on the return.

(e) The Commissioner erred in disallowing the sum of \$15,144.40 or any portion of the allowance or deduction for bad debts or losses claimed by petitioner as a deduction from gross income for the taxable calendar year 1934.

(f) The Commissioner erred in adding to petitioner's income, as returned for the taxable calendar year 1934, the amount of \$25,057.00, or any portion thereof, representing dividends received by petitioner in said year from domestic corporations subject to tax under the provisions of the Revenue Act of 1934 and earlier Revenue Laws.

(g) The Commissioner erred in asserting, determining and attempting to impose on the petitioner in addition to the tax liability as returned by petitioner, as a penalty asserted for negligence as defined in Section 293(a) of the Revenue Act of 1934, the sum of \$681.61 or any other amounts.

(h) The Commissioner erred in alleging, asserting and determining that petitioner received income in or was liable to tax for the calendar year 1934 in any amount greater than that as returned by petitioner for said year, and particularly in attempting to impose additions to petitioner's income and tax for said year under alleged authority of Sections 102(a) or 293(a) of the Revenue Act of 1934. [6]

5. The facts upon which petitioner relies as a basis for this proceeding are as follows:

(a) Petitioner is a corporation duly organized on December 14, 1928, under the laws of the State

of Nevada. Its correct name and title is "Wilson Bros. & Co." instead of "Wilson Brothers and Company", as stated in the notice of deficiency. Its sole stockholders are Francis A. Wilson and Winfred T. Wilson.

(b) Petitioner was formed to take over the business of a copartnership of the same name and to acquire, own and operate timber lands, saw mills, logging railroads and equipment, and steamships; also, to buy, sell and transport lumber, to own, operate and maintain steamships and to utilize the same for the transport of cargoes.

(c) During said taxable year, petitioner kept and maintained its books of account on the accrual basis.

(d) On or about March 15, 1935, petitioner filed its income tax return for the taxable calendar year 1934 in which it reported no taxable income for said year. Said return stated specifically the items of petitioner's gross income, the deductions and credits claimed by it.

(e) The Commissioner has erroneously and illegally proposed and determined against petitioner for the taxable year 1934 a deficiency in income tax in the amount of \$2,614.46, an additional tax for said year in the amount of \$13,632.27 by erroneous and illegal application of Section 102(a) of the Revenue Act of 1934, and penalties of five per cent on each of the amounts above mentioned by erroneous and illegal [7] application of Section

293(a) of the Revenue Act of 1934; or a total deficiency and penalty of \$14,313.88.

(f) Respondent added to the amount of total income reported by petitioner in its income tax return for the taxable calendar year 1934 the amount of \$5,211.21 designated in the deficiency notice as "Excessive depreciation". Petitioner had claimed as deductible depreciation in its return the following and only the following items and amounts with respect to assets used in the trade or business:

Wooden buildings	\$ 500.00
Steamers "Idaho" and "Oregon".....	8,750.00
Furniture and fixtures.....	500.00
Automobiles	1,649.85

Or a total of.....\$11,399.85

Respondent's disallowance of items of deduction in the deficiency notice in this proceeding has not been itemized or specifically explained therein, or in his answer to the original petition on file herein or by proofs at hearing of this proceeding.

(g) Petitioner has stipulated to the disallowance of depreciation claimed on wooden building in the amount of \$500.00 which was the total amount claimed. Petitioner has also stipulated that the allowable depreciation on automobiles for the year 1934 is the amount of \$1,163.66.

(h) The basis to petitioner for depreciation of its 75% interest in the steamship "Idaho", without allowance for depreciation in prior years, was on

December 31, 1931, at least \$200,216.67; the depreciation claimed and allowed by respondent [8] to said date was \$108,750.00, as has been stipulated; the petitioner's depreciable basis on said steamship as of December 31, 1931, as adjusted for depreciation allowed and allowable for prior years was at least \$91,466.67.

(i) As determined in said deficiency notice said steamship "Idaho" had a useful depreciable life of not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date; and petitioner is and was entitled to an annual depreciation allowance of not less than \$6,097.11 for said period.

(j) The basis to petitioner for depreciation on its 100% interest in the steamship "Oregon", without allowance for depreciation in prior years, was on December 31, 1931, at least \$205,766.32; the depreciation claimed and allowed by respondent to said date was \$109,231.69, as has been stipulated; the petitioner's depreciable basis on said steamship as of December 31, 1931, as adjusted for depreciation allowed and allowable for prior years was at least \$96,434.63.

(k) As determined in said deficiency notice said steamship "Oregon" had a useful depreciable life not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date, and petitioner is and was entitled to an annual depreciation allowance of not less than \$6,437.64 for said period.

(1) That on January 2, 1929, petitioner acquired furniture and fixtures of a fair market value of not less than \$5,000.00, on which respondent has determined a useful and depreciable life of ten years. From January 2, 1929, respondent [9] has allowed \$1,500.00 depreciation on said furniture and fixtures to December 31, 1931, and has determined a rate of 10% for depreciation on the remaining ten years of life thereof. Petitioner is therefore entitled to allowance for depreciation on said furniture and fixtures in an amount not less than \$350.00 for the taxable year 1934.

(m) In its income tax return for the taxable calendar year 1934 petitioner sought deduction of the amount of \$15,144.40 for bad debts which respondent has disallowed in the deficiency notice in this proceeding and added to petitioner's gross income for said year. Said deductions were for the following items:

Partial write off for depreciated value of Kentucky Fuel Gas Corporation Bonds	\$5,500.00
Partial write off of indebtedness of Woodhead Lumber Co. of California	5,000.00
Partial write off of indebtedness of shareholders in the Steamship "Svea"	4,644.40

All of the foregoing items were written off in petitioner's books of account during the year 1934 after investigation of the real worth of said items made on behalf of petitioner and determination by it that

the amounts so written off were beyond hope of recovery and worthless, which was in fact the case.

(n) Petitioner is therefore entitled to deduct from its gross income of \$63,901.60 as reported in its income tax return for the year 1934 and accepted by respondent in the deficiency notice upon which these proceedings were brought, the following [10] deductible items, viz:

Rent on business property, as accepted by respondent	\$ 1,140.00
Taxes, as accepted by respondent.....	396.09
Loss on steamship operations, as accepted by respondent	2,173.18
. Bad debts:	
Kentucky Fuel Gas Co.—partial write-off	5,500.00
Woodhead Lumber Co.—partial write-off..	5,000.00
Steamship "Svea" expense, partial write-off	4,644.40
Dividends, as accepted by respondent.....	25,057.00
Depreciation:	
Steamship "Idaho", 75% interest, not less than	6,097.77
Steamship "Oregon", 100% interest, not less than	6,437.64
Furniture and Fixtures, not less than.....	350.00
Automobiles, as stipulated.....	1,163.66
Salaries and wages, accepted by respondent....	5,815.00
General expense, accepted by respondent	4,117.44
or a total of.....	<u>\$67,892.18</u>
and an excess over deductions claimed in the return of	2,649.22
with a resulting loss of	3,990.57

(o) Petitioner was not formed or availed of for the purpose of preventing the imposition of surtax upon its shareholders or the shareholders of

any other corporation through the medium of permitting gains and profits to accumulate instead of being divided or distributed.

(p) During the year 1934 the economic and financial depression which started in 1929 continued and the impaired and shrunken market value of the assets of petitioner made it in- [11] advisable under sound business practice to declare any dividends or in any other way further impair the assets of the corporation and thus endanger the accomplishment of the business purposes for which petitioner was organized.

(q) Under the facts of this proceeding petitioner is not liable for surtax under section 102 of the Revenue Act of 1934, in any amount upon any possible fair adjustment of its net income for the taxable calendar year 1934.

(r) Under the facts of this proceeding petitioner is not liable for the penalty of five per cent sought to be imposed by respondent under the alleged authority of section 293(a) of the Revenue Act of 1934, because the deficiency notice and the testimony adduced shows no negligence, or intentional disregard of rules and regulations, and respondent failed to offer proof in support of his attempt to impose such a penalty.

Wherefore, petitioner prays that this Board may hear the proceeding and grant to petitioner such relief from deficiency, additional tax and penalty

asserted by Commissioner as may be within the jurisdiction of the Board.

ADOLPHUS E. GRAUPNER

LOUIS JANIN

Attorneys for Petitioner,
1110 Balfour Building,
San Francisco, California. [12]

State of California,
City and County of San Francisco—ss.

Francis A. Wilson, being duly sworn, says that he is the president of the above-named incorporated petitioner and that he is authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

FRANCIS A. WILSON (signed)

Subscribed and sworn to before me this 30th day of June, 1939.

HAZEL E. THOMPSON

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires September 21, 1942. [13]

EXHIBIT "A"

TREASURY DEPARTMENT

Washington

Mar. 8, 1938

Office of
Commissioner of
Internal Revenue

Address Reply

to

Commissioner of
Internal Revenue

And Refer to

Wilson Brothers and Company,
1112 Russ Building,
San Francisco, California.

Sirs:

You are advised that the determination of your income tax liability for the taxable year(s) ended December 31, 1934 discloses a deficiency of \$14,-313.88, income tax, surtax and penalties, as shown in the statement attached.

In accordance with section 272(a) of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a re-determination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C1:P:7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By JOHN R. KIRK (signed)

Deputy Commissioner.

Enclosures:

Statement

Form 870 [14]

STATEMENT

Wilson Brothers and Company,
 1112 Russ Building,
 San Francisco, California
 SUMMARY OF TAX LIABILITY

Income Tax Section 13

Taxable Year Ended	Tax Liability	Tax Assessed	Deficiency	5% Penalty
December 31, 1934.....	\$ 2,614.46	None	\$ 2,614.46	\$ 130.7
Surtax, Section 102				
December 31, 1934.....	11,017.81	None	11,017.81	550.8
Total	13,632.27	None	13,632.27	681.6
Total Deficiencies and penalties.....				\$14,313.8
Net loss reported on return.....				1,341.5
Add:				
1. Excessive depreciation			5,211.21	
2. Bad debts disallowed.....			15,144.40	20,355.6
Net income adjusted for income tax.....				\$19,014.2

EXPLANATION OF ADJUSTMENTS

1. The excessive depreciation has been disallowed in accordance with section 23(1) of the Revenue Act of 1934 and Treasury Decision 4422, the computation of which is shown in exhibit (a) of the revenue agent's report, a copy of which was furnished you on April 12, 1937.

2. The bad debts have been disallowed in accordance with section 23(k) of the Revenue Act of 1934 for the reason no evidence has been submitted to

establish the worthlessness thereof and no permission has been granted you to change from the actual bad debt basis elected in prior years to the reserve basis. [15]

Computation of Income Tax, Section 13

Net income subject to 13¾% tax.....	\$19,014.25
Income tax liability.....	2,614.46
Income tax assessed.....	None
<hr/>	
Income tax deficiency.....	\$ 2,614.46
5% penalty	130.72
<hr/>	
Total income tax deficiency and penalty.....	\$ 2,745.18

Computation of Surtax, Section 102

Net income adjusted for income tax.....	\$19,014.25
Add:	
Dividends received	25,057.00
<hr/>	
Net income adjusted subject to 25% surtax.....	\$44,071.25
Surtax liability	\$11,017.81
Surtax assessed	None
<hr/>	
Surtax deficiency.....	\$11,017.81
5% penalty	550.89
<hr/>	
Total surtax deficiency and penalty.....	\$11,568.70
Total income and surtax deficiencies and penalties.....	\$14,313.88

An examination of the balance sheets submitted with the return leads the Bureau to conclude that your corporation is an investment corporation and subject to the provisions of section 102 of the Revenue Act of 1934.

The understatement of tax for the year 1934 is attributable to negligence and in accordance with the provisions of section 293(a) of the Revenue Act of 1934 a penalty of 5 percent of the deficiencies attached. [16]

The interest due on the deficiencies as provided by law will be computed by this office and demanded by the collector of internal revenue at the time you are called upon to pay the tax.

Payment should not be made until a bill is received from the collector of internal revenue for your district and remittance should then be made to him.

[Endorsed]: U. S. B. T. A. Filed July 10, 1939.

[17]

[Title of Board and Cause.]

ANSWER TO AMENDED PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition.
2. Admits the allegations contained in paragraph 2 of the amended petition.
3. Admits the allegations contained in paragraph 3 of the amended petition.

4. (a) to (h), inclusive. Denies the Commissioner erred in the determination of the deficiency as alleged in subparagraphs (a) to (h), inclusive, of paragraph 4 of the amended petition. [18]

5. (a) Admits the allegations contained in subparagraph (a) of paragraph 5 of the amended petition.

(b) Denies the allegations contained in subparagraph (b) of paragraph 5 of the amended petition.

(c) Admits the allegations contained in subparagraph (c) of paragraph 5 of the amended petition.

(d) Admits on or about March 15, 1935, petitioner filed its income tax return for the taxable calendar year 1934 in which it reported no taxable income for said year, as alleged in subparagraph (d) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(e) Denies the allegations contained in subparagraph (e) of paragraph 5 of the amended petition.

(f) Admits respondent added to the amount of total income reported by petitioner in its income tax return for the taxable calendar year 1934 the amount of \$5,211.21 designated in the deficiency notice as "Excessive depreciation" as alleged in subparagraph (f) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(g) Admits the allegations contained in subparagraph (g) of paragraph 5 of the amended petition.

(h) Admits the depreciation allowed by respond-

ent was \$108,750.00 as stipulated, as alleged in subparagraph (h) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph. [19]

(i) Admits, as determined in said deficiency notice said steamship "Idaho" had a useful depreciable life of not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date, as alleged in subparagraph (i) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(j) Admits the depreciation allowed by respondent was \$109,231.69 as stipulated, as alleged in subparagraph (j) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(k) Admits, as determined in said deficiency notice said steamship "Oregon" had a useful depreciable life not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date, as alleged in subparagraph (k) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(l) Denies the allegations contained in subparagraph (l) of paragraph 5 of the amended petition.

(m) Admits in its income tax return for the taxable calendar year 1934 petitioner sought deduction of the amount of \$15,144.40 for bad debts which respondent has disallowed in the deficiency notice

in this proceeding and added to petitioner's gross income for said year, as alleged in subparagraph (m) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph. [20]

(n), (o), (p), (q), (r). Denies the allegations contained in subparagraphs (n), (o), (p), (q) and (r) of paragraph 5 of the amended petition.

6. Denies generally and specifically each and every allegation in the amended petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and that the petitioner's appeal be denied.

(Signed) J. P. WENCHEL

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

T. M. MATHER,

Special Attorneys,

Bureau of Internal Revenue.

TMM:emb 7-22-39

[Endorsed]: U. S. B. T. A. Filed July 31, 1939.

[21]

United States Board of Tax Appeals

Docket No. 83397,

Docket No. 93667.

WILSON BROTHERS AND COMPANY, (Wilson Bros. & Co.), a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION OF FACTS

It is hereby stipulated by and between the above-named parties hereto, through their respective counsel that the statements hereinafter contained may be considered as true, without prejudice of the right of either party to introduce other and further evidence not inconsistent herewith.

1. The two above numbered proceedings may be heard together and the facts herein stipulated and all material evidence and testimony introduced at such hearing may be considered by the Board of Tax Appeals in making its findings of fact and decisions in both or each of the above-numbered proceedings. [22]

2. The taxable years involved in Docket No. 83397 are 1932 and 1933 and the taxable year involved in Docket No. 93667 is 1934.

3. Prior to the organization of petitioner and on January 31, 1927, F. A. Wilson and W. T. Wilson formed a co-partnership under the name of Wilson

Bros. & Co., which co-partnership continued to do business under that name until after the formation of petitioner corporation under the same name, when said co-partnership was dissolved in January, 1929.

4. Wilson Bros. & Co. is a corporation duly organized and existing under the laws of the State of Nevada, with its principal office, during the taxable years involved, at room 1112 Russ Building, San Francisco, California.

5. On December 14, 1928, said F. A. Wilson and W. T. Wilson caused the incorporation of petitioner with a capital stock of 200,000 shares of a par value of twenty-five dollars per share to take over and continue the business of said co-partnership.

6. On December 31, 1918, each of said F. A. Wilson and W. T. Wilson purchased twenty shares of such capital stock (or a total of forty shares) and each paid to petitioner for said shares so purchased the amount of \$500.00, or a total of \$1,000.00.

7. No other shares of the petitioner corporation have ever been issued by it.

8. For the taxable years involved, petitioner filed income tax returns with the Collector of Internal Revenue, First District of California, as follows: [23]

For the taxable year 1932.....	March 31, 1933,
For the taxable year 1933.....	March 15, 1934,
For the taxable year 1934.....	March 15, 1935.

9. By waivers the time for mailing notice of deficiency for the taxable year 1932 was extended to December 31, 1935, and notice of deficiency for that year was timely mailed.

10. The depreciation on wooden buildings as computed and disclosed in the statement attached to the deficiency notice for the taxable years 1932 and 1933 and as disallowed in the deficiency notice for the taxable year 1934 is accepted as being correct.

11. The amounts of depreciation deducted to December 31, 1931, on the shares or interests acquired by petitioner on January 2, 1929, in the steamships "Idaho" and "Oregon" as computed and allowed in the statement attached to the deficiency notice for the taxable years 1932 and 1933 are as follows:

Steamship "Idaho"	\$108,750.00
Steamship "Oregon"	\$109,231.69

12. The values, life and depreciation allowances of automobiles as set forth in the schedule attached to the report of the Revenue Agent for the year 1934, dated April 12, 1937, and which have been adopted and applied in the deficiency notices for each of the years herein involved are hereby accepted as correct, as follows:

Acquired	Cost	Depreciation to 12/31/31	Balance	Remaining Life	Depreciation Allowable per annum
1929 Lincoln	\$5,498.75	\$4,648.75	\$850.00	2 years	\$425.00
1930 Ford	652.50		652.50	3 years	214.16
1932 Studebaker	2,098.00			4 years	\$524.50

13. The history of the Steamship "Idaho" to the time it was acquired by petitioner on January 2, 1929, is as follows:

The wooden hull of the vessel was built at Aberdeen, Washington, and completed about December 14, 1916. The vessel was constructed on order of and contract with Henry Wilson, for a sixty-five one-hundredths share, Charles R. Wilson Estate, Inc., a twenty-five one-hundredths share and A. B. Johnson a ten one-hundredths share. The completed cost of the vessel was to be and was \$200,000.00

On December 14, 1916, the vessel was given temporary enrollment as a barge and was thereafter towed to Oakland, California, for installation of engines, machinery, and rigging. On or about February 6, 1917, the vessel was completed and Henry Wilson gave to his wife Mary H. Wilson, a twenty one-hundredths share in the vessel, to Winfred T. Wilson, his son, a five one-hundredths share and to Francis A. Wilson, his son, a five one-hundredths share. On February 6, 1917, a permanent enrollment certificate was granted by the Bureau of Navigation, in which the gross tonnage was stated as 1047 tons and the net tonnage as 558 tons. The names of the then owners were therein stated as

Henry Wilson	35/100ths
Mary H. Wilson.....	20/100ths
F. A. Wilson.....	5/100ths
W. T. Wilson.....	5/100ths
Others	35/100ths

On June 6, 1924, Henry Wilson executed a bill of sale with respect to his remaining interest of thirty-five [25] one-hundredths in favor of Mary H. Wilson, his wife. Said bill of sale stated a nominal consideration and was filed for record with the Department of Commerce, Bureau of Navigation on June 7, 1928. A copy of said bill of sale is attached hereto and marked Exhibit "A".

On July 17, 1925, A. B. Johnson and Mariett Johnson, his wife, executed a bill of sale to F. A. Wilson, covering their ten one-hundredths interest in the "Idaho". This transaction was evidenced by bill of sale stating a nominal consideration, dated July 17, 1925 and recorded July 20, 1935.

On July 21, 1925, F. A. Wilson transferred to W. T. Wilson, a five one-hundredths interest in said vessel by bill of sale stating a nominal consideration, dated July 21, 1925, and recorded on the same day.

On January 2, 1929, said Mary H. Wilson, W. T. Wilson and F. A. Wilson conveyed all of their interests, or a total of seventy-five one-hundredths shares in the steamship "Idaho" to petitioner. The instrument of transfer stated a nominal consideration and was recorded on June 3, 1929.

The dead weight tonnage of said "Idaho" was determined in 1918 by the United States Shipping Board to be 1834 tons.

14. The history of the steamship "Oregon" to the time it was acquired by petitioner on January 2, 1929, is as follows:

The wooden hull of the vessel was built in Aberdeen, Washington, and completed on August 9, 1916. The vessel was [26] constructed on order of and contract with Henry Wilson, for fifteen thirty-seconds, Charles R. Wilson Estate, Inc. for fifteen thirty-seconds, and A. B. Johnson, for two thirty-seconds shares. The completed cost of the vessel was to be and was \$140,386.15.

On August 9, 1916, the vessel was given temporary enrollment as a barge and was thereafter towed to Oakland, California, for installation of engines, machinery and rigging. On or about October 25, 1916, the vessel was completed and a permanent enrollment certificate was granted by the Bureau of Navigation, in which the gross tonnage was stated as 989 tons and the net tonnage as 628 tons. The names of the then owners were stated therein as:

Henry T. Wilson.....	15/32nds
A. B. Johnson.....	2/32nds
C. R. Wilson Estate, Inc.....	15/32nds

On December 4, 1918, Henry Wilson executed two bills of sale, each covering a 5/32nds interest in the SS "Oregon", one bill of sale named his son, Winfred T. Wilson as grantee, and the other named his son, Francis A. Wilson, as grantee, instruments were recorded on March 21, 1919.

On November 22, 1918, a certificate of partial ownership was recorded showing the distribution on liquidation of the C. R. Wilson Estate, Inc. of fifteen thirty-seconds interest in the "Oregon" to

Margaret A. Wilson, as trustee, for herself and her children, who were the heirs of Charles R. Wilson, deceased, and the stockholders of the C. R. Wilson Estate, Inc.

On September 30, 1919, Margaret A. Wilson, as trustee as aforesaid, conveyed the interests in the "Oregon" formerly held by the C. R. Wilson Estate, Inc. as follows:

To Henry T. Wilson.....	5/32nds
To F. A. Wilson.....	5/32nds, and
To W. T. Wilson.....	5/32nds.

[27]

The bills of sale were recorded December 4, 1919, and the transfer was made upon a consideration based on a valuation of \$125,000.00 for the entire vessel, or at a cost of \$19,531.25 to each of the above named vendees.

On June 6, 1924, Henry Wilson executed a bill of sale with respect to a ten thirty-seconds interest in the "Oregon" in favor of Mary H. Wilson his wife. Said instrument stated a nominal consideration and was acknowledged on that date and filed for record with the Department of Commerce, Bureau of Navigation on June 7, 1928. A copy of said bill of sale is attached hereto and marked Exhibit "B".

On July 17, 1925, F. A. Wilson purchased from A. B. Johnson a two thirty-seconds share in the "Oregon". The bill of sale therefore was executed July 17, 1925, and recorded July 20, 1925.

On July 21, 1925 F. A. Wilson conveyed a one thirty-seconds share in the "Oregon" to his brother, W. T. Wilson, and the bill of sale, stating a nominal consideration, was recorded on the same day.

On January 2, 1929, said Mary H. Wilson, F. A. Wilson and W. T. Wilson transferred their entire interests, or a total of thirty-two thirty-seconds in the steamship "Oregon" to petitioner. The instrument of transfer, stated a nominal consideration and was recorded on July 3, 1929.

The dead weight tonnage of the said "Oregon" was determined in May, 1918 by the United States Shipping Board to be 1803 tons.

15. Throughout the years 1932, 1933 and 1934 [28] the ownership of petitioner in said steamships continued respectively as follows:

Steamship "Idaho" 75% interest

Steamship "Oregon"100% interest

Witness our hands this 5th day of June, 1939.

ADOLPHUS E. GRAUPNER

LOUIS JANIN

Counsel for Petitioner

J. P. WENCHEL

Mather

Chief Counsel,

Bureau of Internal Revenue,
Counsel for Respondent.

[Endorsed]: U. - S. B. T. A. Filed June 6,
1939. [29]

[Title of Board and Cause.]

Docket Nos. 83397, 93668.

Adolphus E. Graupner, Esq., and Louis D. Janin, Esq., for the petitioner.

Alva C. Baird, Esq., and T. M. Mather, Esq., for the respondent.

MEMORANDUM OPINION.

Disney: These proceedings are for a redetermination of deficiencies in normal income taxes, surtaxes and negligence penalties, as follows:

<u>Docket No.</u>	<u>Year</u>	<u>Normal Tax</u>	<u>Additional Tax under section 104, 1932 Act</u>	<u>Penalty</u>	<u>Total</u>
83397	1932	\$ 477.61	\$10,865.75	\$ 567.17	\$11,910.53
83397	1933	2,870.25	19,207.76	1,103.90	23,181.91
			<u>(Under section 102, 1934 Act)</u>		
93668	1934	2,614.46	11,017.81	681.61	14,313.88

Pursuant to stipulation the two proceedings were heard together and are therefore consolidated for rendition of opinion. [30]

A stipulation of a part of the facts was filed. The facts stipulated are adopted by reference as a part of our findings of fact and, so far as deemed necessary to a determination of the issues involved, are, literally or in substance, set forth herein, together with other material facts found by us. Amended petitions and answers were filed in both proceedings.

The issues are excessive depreciation of properties, mainly those of depreciation of the steamers "Idaho" and "Oregon," and furniture and fixtures for the three years involved, the expense of maintenance of the steamships for the years 1932 and 1933, a question of interest for the years 1932 and 1933, the surtax for all of the years, partial write-off of bad debts as set up for 1933 and 1934, and a 5 per cent negligence penalty.

The particular items and amounts at issue allocated to each of the years involved are as follows:

	1932	1933	1934
1. Additional income asserted			
Alleged additional interest.....	\$5,442.32	\$ 445.18	None
2. Maintenance of steamships			
Disallowed as "Steamship operations"	4,547.05	4,412.26	Allowed
3. Partially Bad Debts Written Off			
(a) Woodhead Lumber Co., Acct's. rec.	None	None	\$5,000.00
(b) SS "Svea", Acct. Rec.....	None	2,160.80	4,644.40
(c) Kentucky Fuel Gas Corp. (bonds)	None	None	5,500.00
4. Additional depreciation allowable			
(a) Steamship "Idaho"	3,865.66	3,865.66	3,865.66
(b) Steamship "Oregon"	5,487.24	5,487.24	5,487.24
(c) Furniture and fixtures.....	151.98	151.98	151.98
5. Additional Tax alleged to be due under section 104 of the Revenue Act of 1932 and section 102 of the Revenue Act of 1934.			
6. Negligence Penalty of 5 per cent alleged to be due under the provisions of section 293(a) of the Revenue Acts of 1932 and 1934.			

[31]

On January 31, 1927, F. A. Wilson and W. T. Wilson formed a copartnership under the name of Wilson Bros. & Co., which copartnership continued

to do business under that name until after the formation of petitioner corporation under the same name, when said copartnership was dissolved in January 1929.

The petitioner is a corporation organized under the laws of Nevada with an authorized capital stock of 200,000 shares of a par value of \$25 each, and with its principal office at 1112 Russ Building, San Francisco, California. It was organized on December 14, 1928, by F. A. Wilson and W. T. Wilson, to take over and continue the business of the partnership. On December 31, 1928, F. A. Wilson and W. T. Wilson each purchased 20 shares of stock and each paid to the petitioner therefor \$500. No other shares have ever been issued. Petitioner during the taxable years kept its books upon the accrual system of accounting and filed income tax returns with the Collector for the First District of California.

Certain issues as to depreciation upon wooden buildings and automobiles have been settled by stipulation which will be reflected in decision under Rule 50. The other issues will be considered in the order above set forth, the facts, except the general facts as to incorporation stated above, being set forth separately in connection with discussion of each issue.

I. The first issue is with respect to additional income from interest, asserted in deficiency notices by respondent in amounts of \$5,442.32 for the year 1932 and \$445.18 for the year 1933. Those amounts

were, as [32] interest on bank deposits, added by the Commissioner to the respective amounts of \$12,949.58 and \$9,035.81 reported by the petitioner, derived from bonds, accounts receivable and banks.

The respondent did not specify any particular sums upon which the alleged additional interest was accrued or paid to petitioner, but simply increased interest accrued or received in the amounts above stated. The petitioner adduced direct and positive testimony that it kept a monthly record of total interest received and that all interest accrued or paid to it during the years 1932 and 1933 from every source was included by it in its income tax returns, for the respective taxable years. It failed, however, to show all specific amounts of interest accrued or paid to it on the respective items, bank deposits, etc., during the taxable years, 1932 and 1933, now in issue, to produce the monthly accounts or to explain fully as to interest on a bank deposit of approximately \$480,000.

Had the petitioner shown the specific amount of interest accrued or paid it on particular items, bank deposits and other items drawing interest, its evidence touching the same would be more satisfactory. However, a certified public accountant testified for the petitioner to the effect that he had verified and compared and ledgers of the banks and of the petitioner, and that all interest shown on the bank ledgers appeared on the books of the corporation, and that he could not find the interest items of \$5,442.32 for 1932 and \$445.18 for 1933 which the

respondent had added to petitioner's income. The deficiency notices mention only interest on bank deposits. In view of the direct and positive testimony [33] touching the subject, to the effect that the corporation kept an interest account of total interest received each month, and that ALL interest accrued or paid to it from ALL sources was duly reported and included in its income tax returns and the books of the corporation and the bank ledgers agreed, though the monthly records were not introduced, we are of the opinion, find and hold that the presumption of the correctness of the respondent's determination on this issue is overcome. Since petitioner reported approximately \$13,000 interest for 1932 and about \$9,000 for 1933, the interest on the \$480,000 deposit is reasonably explained. We find and hold that with respect to this issue the respondent erred in determining that petitioner was taxable in 1932 on \$5,442.32 as additional interest and \$445.18 as additional interest in 1933, and determine this issue in favor of the petitioner. [34]

II. This issue relates to the maintenance and upkeep of two steamers, Idaho and Oregon. The facts involved are simple: The steamers were acquired by the petitioner in January, 1929 principally for the purpose of transporting lumber. After acquisition they were operated only five or six months before they were "laid up," because business got so bad that they could not be operated at a profit. The country then was experiencing a depression which lasted several years. During the tax-

able years in issue the steamers were kept in a seaworthy condition, in order that petitioner might use them if opportunity was afforded to profitably resume lumber transportations. The ships were never abandoned, but always were in charge of some one to look after them. The ships were put in dry dock and their bottoms were painted to protect and preserve them. Watchmen were employed and paid to look after them and certain supplies were furnished. Repairs were made to maintain the ships in proper serviceable condition. Petitioner always expected to put the ships back into commission and reengage in the shipping of lumber when conditions became favorable and the vessels, though not actively in use, were considered a part of the operating assets of the petitioner.

Under conditions in 1934 similar to those in 1932 and 1933, petitioner made claim in its 1934 return under the head of "Steamship operations" for the amount of \$2,173.18, which sum was allowed as a deduction by the respondent. In each of the three taxable years the amounts reported in the income tax returns under the head of "steamship operations" were for the maintenance and upkeep of the Idaho and Oregon.

In our opinion expenses upon the vessels while temporarily laid up because of business conditions are in no different category than expenses while the vessels are at sea. The vessels were not abandoned. The business [35] of operating vessels had not been abandoned. On the entire record as presented we

hold on this issue that the respondent erred in not allowing the claimed deductions for maintenance and upkeep of the two steamers, for the years 1932 and 1933, as ordinary and necessary expense of business.

III. Whether the Commissioner erred in disallowing deductions for certain allegedly partially worthless debts claimed for the years 1933 and 1934, and charged off on the direct write-off method, is the next issue for our determination. The facts may be briefly stated, in connection with each item:

(a) Woodhead Lumber Company.—On January 1, 1934, the petitioner had accounts receivable from the Woodhead Lumber Co. of California amounting to \$43,276.06. In its return for 1934, petitioner took a deduction for bad debts in the amount of \$15,144.40, all of which was disallowed by the Commissioner. The petitioner was on the actual charge-off method of deducting bad debts.

In 1934 petitioner caused an examination of the affairs of the Woodhead Lumber Co. of California and from disclosures resulting from such examination reached the conclusion in 1934 that there could be only a partial recovery on said accounts receivable and that \$5,000 would be a reasonable amount to write off and take as a deduction for such alleged partial bad debt during the year 1934 and such was taken.

There were two companies bearing the name of "Woodhead Lumber Company," one of California and the other of Nevada. In 1932, the Woodhead

Lumber Co. of Nevada bought the inventory and assets of the Woodhead Lumber Co. of California and gave to the latter its note for \$25,000 and as collateral \$37,000 face value of its capital stock, both of which were turned over to the petitioner.

[36]

One witness was of the opinion that the note and stock described were of little or no value, but no facts appear to bear out such a conclusion. After the acquisition of the California company by the Nevada company, the petitioner did business with the Nevada company and is still selling lumber to it. Upon consideration of the entire record we find and determine that the alleged worthless character of the debt from the Woodhead Lumber Co. of California has not been shown. We therefore find and hold that the Commissioner did not err in disallowing the \$5,000 deduction claimed.

(b) SS Svea.—The next item is with respect to accounts receivable from the steamship "Svea," which were written off by petitioner in the amount of \$2,160.80 in 1933 and the amount of \$4,644.40 in 1934 and disallowed by the Commissioner.

On January 1, 1933, accounts receivable from the steamship Svea amounted to \$9,081.78 and on January 1, 1934, they amounted to \$10,804.01. These accounts arose as follows: The Svea was a boat owned by many small owners, among whom were W. T. Wilson owning 7/128ths and F. A. Wilson owning a 9/128ths interest. The petitioner through the taxable years, 1933 and 1934, owned no interest in the

Svea, but was the managing, disbursing and collection agent for the steamship. When the boat was in operation, petitioner got a commission on the freight, but when the boat was not in operation petitioner received nothing, though the owners would expect the petitioner to make necessary advances to keep the boat in condition to be placed in operation again. There was a moral obligation to do so. Petitioner could anticipate repayment only from earnings or recovery from the owners of the boat. In 1933 the petitioner consulted its attorney as to whether it could recover sums which had been paid or advanced by it to the Svea for [37] maintenance of the boat, and was told that it did not look like recovery could be made and suit would be foolish. Thereupon \$2,160 was written off as a bad debt; \$2,160 was 20 per cent of the total expenditure. In 1934 it did not look like the boat would be put in operation for some little time, the account was constantly growing larger, and petitioner wrote off \$4,644.40 as a bad debt.

The above facts do not, in our opinion, prove a deductible partially worthless debt. It is at least doubtful whether there was any promise on the part of anyone to pay, for the sole witness referred to petitioner's moral obligation to make the advances. No contractual obligation is shown. In the absence of a maturity date, and with an apparent limitation upon collectibility in that it was to be from earnings of the boat, there was no ordinary right of a

creditor. *Commissioner v. Schmoll Fils Associated, Inc.*, Fed. (2d) (C. C. A., 2nd Cir., March 18, 1940). Assuming, however, a debt and a debtor, there is no showing that the debtors were unable to pay. Who they are is not shown, except that the two stockholders of petitioner owned a one-eighth interest in the boat. The boat itself is not shown to have been encumbered so that collection by sale was impossible. In fact, all that petitioner shows is that it did not look as if the boat would be put into operation for some little time, and that an attorney advised that it would be foolish to sue and it did not look like anything could be recovered. Such opinion seems directed to the nature of the obligation as moral rather than legal. If it was devoted to solvency of the owners, it does not constitute the showing of fact required as to the debtor's financial condition. We hold that no error is shown in the disallowance of the deduction for partially worthless debts. [38]

(c) *Kentucky Fuel and Gas Corporation Bonds.*—The petitioner insists that the Commissioner erred in not allowing as a deduction, a write-off as a partial bad debt of \$5,500 in 1934, with respect to Kentucky Fuel and Gas Corporation bonds. In 1934 petitioner owned bonds of Kentucky Fuel and Gas Corporation. Investigation was made during the year, upon which \$5,500 was written off as a partial bad debt and deducted in petitioner's return. The bonds were a first mortgage upon the property of the company, which was an operating

company with considerable assets. It went into receivership about 1931. The record does not show when or from whom the bonds were acquired, the cost, nor whether in 1934 there was basis for partial charge off which did not exist in 1933 or earlier. The market value of the bonds, as shown by bid prices, declined from \$74 on January 1, 1930, to \$5 on December 31, 1931, to \$2 on December 31, 1933, and \$4.50 on December 31, 1934. Obviously such a record does not show error on the part of the Commissioner in denying the deduction. We hold that there was no error.

IV. The next issue is as to the proper amount of depreciation allowable in each of the taxable years on (a) the steamship Idaho, (b) the steamship Oregon, and (c) furniture and fixtures. The additional depreciation allowable as contended for by petitioner is for the years and in the amounts heretofore set forth above.

On January 2, 1929, the petitioner acquired a 75/100ths interest in the Idaho, and the entire interest in the Oregon, after a history of the two ships and in a manner, as follows:

(a) The wooden hull of the Idaho was completed about December 14, 1916. The vessel was constructed on order and contract with Henry Wilson for a 55/100ths share, Charles R. Wilson Estate, Inc., a 25/100ths share, and A. B. Johnson a 10/100ths share. The completed cost of the vessel was to be and was \$200,000. Its fair market value on February 6, 1917, was not less than [39]

\$395,000. The vessel Idaho was completed about February 6, 1917, and Henry Wilson gave his wife, Mary H. Wilson, a 20/100ths share in the vessel, to his son, Winfred T. Wilson, a 5/100ths share, and to another son, Francis A. Wilson, a 5/100ths share. On February 6, 1917, a permanent enrollment certificate was granted by the Bureau of Navigation in which the gross tonnage was stated to be 1,047 tons and the net tonnage as 558 tons. The names of the then owners were therein stated as:

Henry Wilson	35/100ths
Mary H. Wilson.....	20/100ths
F. A. Wilson	5/100ths
W. T. Wilson	5/100ths
Others	35/100ths

On June 6, 1924, Henry Wilson executed a bill of sale with respect to his remaining interest of 35/100ths in the Idaho in favor of Mary H. Wilson, his wife. Said bill of sale stated a nominal consideration but was in fact a gift and was filed for record with the Department of Commerce, Bureau of Navigation, on June 7, 1928. On July 17, 1925, A. B. Johnson and Mariett Johnson, his wife, executed a bill of sale to F. A. Wilson, covering their 10/100ths interest in the Idaho. This transaction was evidenced by bill of sale, stating a nominal consideration, though in fact F. A. Wilson paid them \$11,716.67. On July 21, 1925, F. A. Wilson, in consideration of one-half the above sum, trans-

ferred to W. T. Wilson a 5/100ths interest in said vessel by bill of sale which, however, stated a nominal consideration and was recorded on the same day. On January 2, 1929, said Mary H. Wilson, W. T. Wilson and F. A. Wilson conveyed all of their interests, or a total of 75/100ths shares, in the steamship Idaho to petitioner. The instrument of transfer stated a nominal consideration of \$10 and was recorded on June 3, 1929, but no consideration was paid. The transfer was a contribution [40] to petitioner's capital from Mary H. Wilson, F. A. Wilson and W. T. Wilson. The dead weight tonnage of said Idaho was determined in 1918 by the United States Shipping Board to be 1,834 tons.

(b) The wooden hull of the Oregon was completed on August 9, 1916. The vessel was constructed on order of, and contract with, Henry Wilson for 15/32nds, Charles H. Wilson Estate, Inc., for 15/32nds, and A. B. Johnson for 2/32nds, shares. The completed cost of the vessel was to be and was \$140,386.15. Its fair market value on January 10, 1918, and on December 4, 1918, was not less than \$385,000. About October 25, 1916, the vessel was completed and a permanent enrollment certificate was granted by the Bureau of Navigation in which the gross tonnage was stated as 989 tons and the net tonnage as 628 tons. The names of the then owners were stated therein as:

Henry T. Wilson	15/32nds
A. B. Johnson	2/32nds
C. R. Wilson Estate, Inc.	15/32nds

On or about January 10, 1918, Henry Wilson and Mary H. Wilson, his wife, executed and delivered a deed of gift to W. T. Wilson and F. A. Wilson, each, to a $\frac{5}{32}$ nds interest in the various properties operated or held in the firm name of Wilson Bros. & Co., including real estate, securities, merchandise, machinery, vessels, etc. On December 4, 1918, Henry Wilson executed two bills of sale, each covering a $\frac{5}{32}$ nds interest in the steamship Oregon. One bill of sale named his son, W. T. Wilson, as grantee, and the other named his son, F. A. Wilson, as grantee. The instruments were recorded on March 21, 1919, and were confirmatory of the gifts of January 10, 1918. On November 22, 1918, a certificate of partial ownership was recorded showing the distribution on liquidation of the C. R. Wilson Estate, Inc., of $\frac{15}{32}$ nds interest in the Oregon to Margaret A. Wilson, as trustee, for herself and her [41] children, who were the heirs of Charles R. Wilson, deceased, and the stockholders of the C. R. Wilson Estate, Inc.

On September 30, 1919, Margaret A. Wilson, as trustee as aforesaid, conveyed the interests in the Oregon formerly held by the C. R. Wilson Estate, Inc., as follows:

To Henry T. Wilson	$\frac{5}{32}$ nds
To F. A. Wilson	$\frac{5}{32}$ nds, and
To W. T. Wilson	$\frac{5}{32}$ nds.

The bills of sale were recorded December 4, 1919, and the transfer was made upon a consideration

based on a valuation of \$125,000 for the entire vessel, or at a cost of \$19,531.25 to each of the above named vendees. On June 6, 1924, Henry Wilson executed a bill of sale with respect to a 10/32nds interest in the Oregon (a gift) in favor of Mary H. Wilson, his wife. Said instrument stated a nominal consideration and was acknowledged on that date and filed for record with the Department of Commerce, Bureau of Navigation, on June 7, 1928. On July 17, 1925, F. A. Wilson purchased from A. B. Johnson a 2/32nds share in the Oregon. The bill of sale therefor was executed July 17, 1925, and recorded July 20, 1925. The consideration paid was \$4,954.72. On July 21, 1925, F. A. Wilson for and in consideration of one half of said amount conveyed a 1/32nd share in the Oregon to his brother, W. T. Wilson, and the bill of sale, stating a nominal consideration, was recorded on the same day. Thereafter, F. A. Wilson and W. T. Wilson each owned 11/32nds interest in the Oregon and their mother, Mary H. Wilson, owned 10/32nds interest therein. On January 2, 1929, said Mary H. Wilson, F. A. Wilson and W. T. Wilson transferred their entire interests, or a total of 32/32nds, in the steamship Oregon to petitioner, the transfers being a [42] contribution without consideration, though the instrument of transfer stated a nominal consideration and was recorded on July 3, 1929. The dead weight tonnage of the Oregon was determined in May 1918 by the United States Shipping Board to be 1,803 tons.

Throughout the years 1932, 1933 and 1934 the ownership of petitioner in said steamships continued respectively as follows:

Steamship "Idaho"	75% interest
Steamship "Oregon"	100% interest

The dispute between the parties on this issue is due to the difference in the basis selected to be used for depreciation. The amounts of depreciation deducted to December 31, 1931, on the shares or interests acquired by petitioner on January 2, 1929, in the steamships Idaho and Oregon as computed and allowed in the statement attached to the deficiency notice for the taxable years 1932 and 1933 are as follows:

Steamship "Idaho"	\$108,750.00
Steamship "Oregon"	109,231.69

The petitioner accepts the totals of depreciation allowable and allowed to December 31, 1931, accepts 15 years as the extended life of the depreciable items and 6-2/3 per cent as the proper rate of depreciation, all as determined by the respondent in the deficiency notices, but insists the respondent adopted an incorrect basis for depreciation as of January 1, 1932, resulting in error in the amount of depreciation allowable thereon for the three taxable years, 1932, 1933 and 1934; also that in fixing a basis for depreciation on the two vessels the respondent relied upon the original cost of the steamships and did not take into consideration the fact that the interests owned by the petitioner on Jan-

uary 2, 1929, came into possession of the donors thereof in fractional shares acquired at different times and [43] under different circumstances. Petitioner's position is therefore that the total of the bases of the shares, with allowance for depreciation only for the period such shares were held by petitioner's donors, constitutes the basis of depreciable value for each ship. The parties seem in agreement upon the proposition that the basis for depreciation is cost, the fair market value on date of any gift, made prior to January 1, 1921, and as to acquisitions by gift made after December 31, 1920, cost or other basis in the hands of the donor or the last preceding owner by whom it was not acquired by gift. Section 114 (a) and 113 (a) (2), (4), Revenue Act of 1932.

The respondent now contends as to the 75 per cent interest owned by the petitioner in the Idaho that 10 per cent was purchased July 17, 1925, at a cost of \$11,716.67, that 30 per cent was acquired by gift February 6, 1917, of a value of \$131,666.66, and that 35 per cent was acquired by gift on June 6, 1924, but that no basis is shown. He therefore calculates a total base of \$143,383.33, and, it being agreed that \$108,750 had already been allowed as depreciation prior to January 1, 1932, contends for a residual base of \$34,633.33. The petitioner agrees that the 10 per cent interest cost \$11,716.67 on purchase on July 17, 1925, but contends that the 30 per cent interest acquired February 6, 1917, had a value of \$118,500, being 30 per cent of a total value for

the Idaho of \$395,000; also that the gift of a 35 per cent interest made July 6, 1924, had a base of \$70,000, based on a construction cost of \$200,000. It thus appears that we must decide (a) the value of the boat on February 6, 1917, and (b) what basis, if any, is proved for the gift of a 35 per cent interest on June 6, 1924. The evidence establishes, and we find, that the Idaho had a total value of \$395,000 on February 6, 1917. The evidence is, and we find, that in 1917 the fair [44] market value of a fractional interest in a boat was its proportionate part of the total value. Therefore the 10 per cent interest which passed without consideration other than stock to the corporation in January 1929 from its two stockholders, W. T. Wilson and F. A. Wilson, would have a basis of \$39,500, since under section 113 (a) (8) (B), Revenue Acts of 1932 and 1934, such contribution to the corporation takes a basis the same as in their hands, and they having acquired it by gift from their father prior to January 1, 1921, in their hands the base was the fair market value at time of acquisition by them. Section 113 (a) (4), Revenue Acts of 1932 and 1934. Likewise the other 10 per cent contributed to the corporation by the two stockholders and acquired by them by purchase in 1925 takes a basis of cost to them, i. e., \$11,716.67. As to the basis for the gift of a 35 per cent interest made June 6, 1924: The total cost of construction of the Idaho was \$200,000. Was the cost to Henry Wilson, donor on June 6, 1924, proportionate thereto? The respondent con-

tends that cost to Henry Wilson has not been shown. On the deficiency notice introduced in evidence in general, with respondent's counsel stating that he has no objection, it appears that the respondent in computing the depreciation used \$200,000 as "cost," 75 per cent as "Interest owned by Wilsons" and "cost of interest" as \$150,000. It is stipulated that the vessel was constructed on order of and contract with Henry Wilson for a "fifty-five one hundredths share." We think that the evidence clearly indicates that his base for 55 per cent would be 55 per cent of \$200,000, or \$110,000. He gave away 30 per cent on February 6, 1917, leaving only 25 per cent of the 55 per cent. Where [45] did he acquire the other 10 per cent which on February 6, 1917, he is recorded as owning on the permanent enrollment certificate issued by the Bureau of Navigation? Is the stipulation as to 55 per cent being constructed on his order a mistake intended to read "65%" or did he, between the time of construction of the ship and prior to February 6, 1917, acquire it in some other manner? The record is in fact silent, and therefore no base is clearly shown as to 10 per cent donated to his wife on June 6, 1924. We are inclined to believe that "65%" was intended, for the reason that the stipulation recites that the vessel was constructed 55 per cent on order of Henry Wilson, 25 per cent on order of Charles R. Wilson Estate, Inc., and 10 per cent on order of A. B. Johnson, thus totalling only 90 per cent. The construction of the hull was completed December 14, 1916.

Within 60 days, i. e., on February 6, 1917, Henry Wilson owned the missing 10 per cent, for he is recorded as owning 35 per cent after gifts of 30 per cent to his wife and sons. Moreover, as above set forth, the respondent in determining the deficiency gave the entire 75 per cent eventually acquired by petitioner a basis of cost of \$200,000 total and \$150,000 for the 75 per cent. Section 113 (a) (2) of the Revenue Act of 1932 provides as to basis of gifts after December 31, 1920:

* * * If the facts necessary to determine such basis are unknown to the donee, the Commissioner shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Commissioner finds [46] it impossible to obtain such facts, the basis shall be the fair market value of such property as found by the Commissioner as of the date or approximate date at which, according to the best information that the Commissioner is able to obtain, such property was acquired by such donor or last preceding owner.

We therefore conclude and hold that the basis of the entire 65 per cent donated on June 6, 1924, was cost, \$130,000. Of the 65 per cent, 20 per cent passed by gift to Mary H. Wilson in 1917 and 35 per cent in 1924, and from her to the petitioner corporation in 1929. Since she was not a stockholder, this constituted a gift and under section 113 (a) (2) of the Revenue Acts of 1932 and 1934, the basis is that of the last preceding owner by whom the prop-

erty was not acquired by gift. The basis, therefore, of the 55 per cent is the cost to Henry Wilson, donor to Mary, or \$110,000, being 55 per cent of the \$200,000 cost of construction of the boat. Thus the total basis for the 75 per cent interest acquired by petitioner is \$162,216.67. Subtracting therefrom \$108,750 deducted to December 31, 1931, leaves \$53,466.67, the unadjusted basis for depreciation on December 31, 1931.

Petitioner argues that this should be adjusted by the subtraction of such portion of the \$108,750 as was allowed as depreciation prior to acquisition of the 10 per cent interest by purchase on July 17 and 21, 1925, by the Wilson brothers. The necessary facts so to do are not in the record. The record shows the total depreciation \$108,750 and petitioner urges us to prorate it over the years between construction of the boat and December 31, 1931. But the deficiency notice, above referred to, shows that the rate was not uniform throughout [47] the years. How many times it may have changed and therefore how much depreciation was in fact allowed to A. B. Johnson prior to his sale of the interest on July 17, 1925, the record does not show. We therefore hold that the basis for depreciation on December 31, 1931, as to the 75 per cent interest in the Idaho was \$53,466.67.

(b) As to depreciation on the Oregon the parties agree on most of the items of basis in the sum of \$164,429.22, but disagree as to the basis for gifts made after December 31, 1920, that is, a gift of

10/32nds interest on June 6, 1924, from Henry Wilson to his wife, Mary H. Wilson. We find that 5/32nds thereof was acquired by purchase from Margaret Wilson, Trustee, at a cost of \$19,531.25 and that 5/32nds was acquired at cost of construction, i. e., 5/32nds of \$140,386.15, or \$21,935.35, and therefore conclude and hold that the total basis for depreciation to petitioner is therefore \$205,796.32. Depreciation allowed prior to January 1, 1932, was \$109,231.69, leaving \$96,564.63 as unadjusted basis of depreciation on that date. Petitioner, as in case of the Idaho above discussed, urges adjustment to eliminate the depreciation allowed prior to purchase of interests donated to the petitioner. For the same reasons above set forth as to the Idaho, the lack of facts in the record, with which to make the desired adjustment, we hold that the basis for depreciation as to the Oregon on December 31, 1931, was \$96,564.63.

(c) The furniture and fixtures of petitioner were taken over from its predecessor January 2, 1929, at a valuation of \$5,000 and were so set up as an asset on its books of account. Petitioner in its returns began to depreciate said items on the basis of such value for a ten-year life and took deductions for depreciation thereon in its income tax returns for the years 1929, 1930 and 1931, in the amount of \$500 per annum, or a 10 per cent rate [48] of depreciation, which for the said three years were allowed by the respondent. The record does not show when the furniture and fixtures were ac-

quired by the partnership (petitioner's predecessor) though they were taken over by the petitioner in January 1929 at a valuation of \$5,000.

After recognizing for three years the \$5,000 valuation and allowing a deduction for depreciation at a 10 per cent rate—\$500 per year—the respondent determined that the furniture and fixtures instead of costing and having a value of \$5,000, at which figure they were taken over by petitioner, cost the partnership and had a value of only \$3,480.20 and after allowing the \$1,500 depreciation for three years previously taken by the petitioner, found the residual cost and value to be only \$1,980.20, upon which he allowed an annual 10 per cent rate of deduction for depreciation, \$198.02, instead of \$350, contended for by petitioner presumably on the assumption that the respondent having previously considered the cost and value as \$5,000 was bound thereby and estopped from reaching a different finding and determination, although it was never shown at what date the furniture and fixtures were acquired by the partnership or that their cost was in fact more than \$3,480.20 ultimately determined by respondent. The burden of making a full and satisfactory showing touching the cost and deduction claimed, the age, condition and remaining useful life, etc., of the assets in question, rested upon the petitioner and we find and determine were not satisfactorily shown by petitioner, and therefore we sustain the action of the respondent with respect to this issue. See T. D. 4422 and section 23

(k) of the Revenue Act of 1932 and article 165 of Regulations 69, 65 and 62 as amended, which in part states the following: [49]

* * * The deduction for depreciation in respect of any depreciable property for any taxable year shall be limited to such ratable amount as may reasonably be considered necessary to recover during the remaining useful life of the property the unrecovered cost or other basis. The burden of proof will rest upon the taxpayer to sustain the deduction claimed. Therefore, taxpayers must furnish full and complete information with respect to the cost or other basis of the assets in respect of which depreciation is claimed, their age, condition and remaining useful life, the portion of their cost or other basis which has been recovered through depreciation allowances for prior taxable years, and such other information as the Commissioner may require in substantiation of the deduction claimed.

V. The next question is whether the Commissioner erred in determining deficiencies against the petitioner by adding, under section 104, Revenue Act of 1932¹, 50 per cent, and under section 102,

¹Sec. 104. Accumulation of Surplus to Evade Surtaxes.

(a) If any corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its shareholders through the medium of permitting its

Revenue Act of 1934, 25 per cent, of net income as defined in subsection (c). The Commissioner made his determination under sections 104 and 102 as follows:

Year	Net Income under Section 21	Dividends added	Total or Net Income adjusted under 104(c) [or 102(c), Revenue Act of 1934]	Tax Liability at 50 % under 104(a) [or 25 % under 102(a), Revenue Act of 1934]
1932	\$ 3,473.50	\$18,258.00	\$21,731.50	\$10,865.75
1933	20,874.51	17,541.00	38,415.51	19,207.76
1934	19,014.25	25,057.00	44,071.25	11,017.81

[50]

The facts so far as material on this question may be summarized, and we find as follows: Petitioner was organized to engage in the business of logging,

gains and profits to accumulate instead of being divided or distributed, there shall be levied, collected, and paid for each taxable year upon the net income of such corporation a tax equal to 50 per centum of the amount thereof, which shall be in addition to the tax imposed by section 13 and shall be computed, collected, and paid upon the same basis and in the same manner and subject to the same provisions of law, including penalties, as that tax.

(b) The fact that any corporation is a mere holding or investment company, or that the gains or profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a purpose to escape the surtax.

(c) As used in this section the term "net income" means the net income as defined in section 21, increased by the sum of the amount of the dividend deduction allowed under section 23 (p) and the amount of the interest on obligations of the United States issued after September 1, 1917, which would be subject to tax in whole or in part in the hands of an individual owner.

* * * * *

manufacture, purchase, sale and transportation of lumber, and operation of steamships. The steamers Oregon and Idaho were acquired in January 1929, were operated by the petitioner for about six months and were then laid up, and had not again been put into operation at the close of the taxable years. Some lumber and allied business was carried on. The corporation always had the purpose of re-engaging in the lumber and shipping business. The partnership which had preceded the corporation had about \$1,500,000 in the logging, lumbering and milling business and it would have required about that much capital at the time of the hearing. The petitioner did not reenter the lumber-logging-milling business prior to or during 1932, 1933 and 1934, because the losses were heavy in the logging business, the sawmills were taking big losses, business was depressed, no building was going on and it was very hard to sell lumber, and it would have been unprofitable to go into a business which was losing money. The petitioner reported in Federal income tax returns gross sales as follows: 1932—\$28,725.96; 1933—\$92,262.09; 1934—\$170,239.51. Net losses were reported by petitioner as follows: 1932—\$11,740.89; 1933—\$1,341.36; 1934—\$118.75. The petitioner had during the taxable years a net loss from its operations other than ownership of stocks. It had income, however, from dividends on stocks of domestic corporations, and reported under that heading, and deducted, as follows: 1932—\$18,258; 1933—\$17,541; 1934—\$25,057. On balance sheets attached

to the income tax returns undivided profits (elsewhere in the returns for 1932 and 1933 referred to as "surplus and undivided profits") were reported as of December 31 in each taxable year as follows: 1932—\$19,309.75; 1933—\$36,732; 1934—\$25,447.64.

[51]

The income tax returns showed common stock on January 1 of the years from time of incorporation, as follows:

1929.....	\$696,000	1932.....	\$2,500,000
1930.....	746,000	1933.....	2,500,000
1931.....	800,000	1934.....	2,500,000

Common stock as of December 31, 1934, was returned as \$2,535,000. The only stock ever issued was \$1,000, to W. T. Wilson and F. A. Wilson, for \$500 paid by each on December 31, 1928.

Capital contributions of cash were from time to time made by F. A. Wilson and W. T. Wilson. With such contributions the petitioner purchased securities, in practically all cases stocks of domestic corporations. All stocks were purchased by the corporation for cash. No stocks or bonds were transferred by W. T. Wilson or F. A. Wilson to the corporation. The income tax returns filed by petitioner and its records, as placed in evidence, do not agree in important particulars. The income tax returns in part show as follows:

	December 31		
	1932	1933	1934
Assets			
Cash	\$1,106,377.07	\$1,022,123.45	\$ 972,147.49
Securities of Domestic Corporations	1,000,943.50	1,032,190.55	1,077,778.05
Liabilities			
Notes payable	200,000.00	—	—
Common stock	2,500,000.00	2,500,000.00	2,535,000.00

However, we find that the petitioner included in the amounts returned as cash, for each of said taxable years, I.O.U.'s in large amounts, and we find the facts to be as follows, with respect to the respective items above set out: [52]

	December 31		
	1932	1933	1934
Assets			
Cash, as shown by Account Books and records.....	\$ 96,638.23	\$ 9,186.43	\$ 73,707.36
Securities of Domestic Corporations as shown by Books of account and Record			
(cost)	750,943.50	782,190.55	837,778.05
" (market value)...	439,961.87	777,792.00	810,797.75
Liabilities			
Notes payable as shown by record	—	—	—
Common stock per record.....	1,000.00	1,000.00	1,000.00

The petitioner's records carried no item of \$200,000 notes payable, though such item appeared in the income tax returns for 1929, 1930, 1931, and 1932. The petitioner kept no record of petty cash, and no account of the I.O.U.'s placed in the cash box by W. T. Wilson and F. A. Wilson. At the

time of trial petitioner's cash box contained one I.O.U. for \$843,438.54, consisting of two equal items, one purportedly due from W. T. Wilson and the other from F. A. Wilson. A certified public accountant who testified for petitioner attempted to take a trial balance from petitioner's general ledger as of January 1, 1932, December 31, 1932, December 31, 1933, and December 31, 1934, but was unable to do so because the general ledger accounts lacked other accounts necessary to a complete balance of the records. Francis Wilson, an officer of the company, furnished the accountant necessary information as to identity of additional accounts and a balance of the books was then completed. On January 31 (year not shown) the books show "transfer from treasury stock \$10,000." W. T. Wilson testified that "we put in that much cash to take it up." The ledger of the corporation carried two accounts headed "treasury stock," totalling \$250,000, but there was in fact [53] no treasury stock. The corporate books do not show the years, though dates of days and months appear. No dividends or salaries to officers were paid by the petitioner from incorporation until after the end of the taxable years here in question.

W. T. Wilson paid about \$150 Federal income tax in 1932, and none in 1933 and 1934. F. A. Wilson paid none for 1932, 1933 and 1934.

Petitioner's books showed accounts receivable from F. A. Wilson as follows:

Year	Charges	Credits	Net Due December 31
1933	\$82,597.77	\$39,363.40	\$43,234.37
1934	62,199.38	69,821.25	35,612.50

On January 2, 1935, F. A. Wilson was credited with \$35,612.50 by purchase of Kennecott Copper stock.

The general ledger trial balances showed accounts receivable from F. A. Wilson to be \$28,091.96 on December 31, 1933. "W. Wilson" is shown as owing accounts receivable on December 31 of the taxable years 1932, 1933 and 1934, in the following respective amounts: \$17,717.88, \$16,917.88, \$16,917.88.

What do the facts above epitomized signify with reference to purpose to escape surtax within the purview of section 104 of the Revenue Act of 1932 and section 102 of the Revenue Act of 1934? Patently the record is unsatisfactory and often contradictory, and the corporate books kept in no normal manner.

First, we hold that the corporation was not FORMED for the purpose interdicted by the above sections. The parties have stipulated that petitioner was incorporated "to take over and continue the business of said co-partnership." This indicates a business purpose in formation of the [54] corporation. For a short time, about five or six months, after formation of the corporation and acquisition of the two steamers in January 1929, the corporation operated the steamers. Shortly thereafter came the financial crash of October 1929. We are not

prepared to say that the two incorporators at the inception of this corporation formed it for the purpose involved in the statutes under consideration.

Was the corporation AVAILED OF during 1932, 1933 and 1934 for the purpose of preventing imposition of surtax upon its two stockholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed? The respondent so considered in determining the tax as set forth in the deficiency notices, and the burden is upon the petitioner to show to the contrary. *Chicago Stock Yards Co.*, 41 B. T. A. (No. 87, March 20, 1940). Though the petitioner was not, in our opinion, a "mere" holding or investment company, within the statutory phrase we find it to be, during the taxable years, primarily such a holding or investment company. Actual business operations were comparatively small. No cash book was kept because transactions were too few and too small, and vouchers were used instead. The boats were laid up long before the taxable years, and net loss from business operations (except ownership of securities) was taken each taxable year. No dividends were paid. No salaries were paid to officers. At the same time, the two sole stockholders contributed large amounts of cash to their corporation. The evidence of one of the stockholders indicates that such contributions of cash and other assets amounted to \$1,279,314.24. We are unable to make such finding of fact, for the record is to a considerable extent contradictory and it is plain that

the testimony of the witness can not be accepted herein at face value. [55]

The witness, W. T. Wilson, testified that in the month of incorporation, December 1928, \$695,000 in cash and other assets was put into the corporation, that \$50,000 was added about January 1, 1929, that in January 1930, \$54,000 was contributed, making a balance of \$800,000 on January 1, 1931, that during January 1931, \$480,312.24 which he and his brother had in a San Francisco bank was added (in addition to \$1,700,000 in I.O.U.'s), that \$35,000 was transferred from profit and loss into the surplus account, and then from book surplus to capital, but that there was a net loss from operations. Explaining the increase in cash from \$56,593.58 on December 31, 1930, to \$1,642,298.24 on December 31, 1931, he said "Oh, we just put a few I.O.U.'s in the cash box," and that a large part of the difference was I.O.U.'s; that they used I.O.U.'s right along; that he kept corporate books and they balance every year perfectly. However, W. T. Wilson and his brother, the only other stockholder, for four consecutive years swore to income tax returns of the petitioner, stating cash in large amounts—up to about \$1,000,000—which the corporation did in fact not possess, and which the witness at the hearing explained as I.O.U.'s from his brother and himself. At the time of hearing, petitioner's cash box still contained such an I.O.U. in the amount of \$843,438.54. The same oaths represented for four consecutive years that the petitioner owed notes pay-

able of \$200,000, contrary to the fact, represented stocks of domestic corporations to be about \$250,000 more than was the fact, and for six years represented common stock to be from \$696,000 to \$2,535,000 when in fact it was \$1,000. One sworn statement appears to have equal weight with another, particularly when all are with reference to the same proposition—petitioner's income taxes. *Evan V. Quinn et al.*, 26 B. T. A. 970. It is apparent, however, from the bank [56] books, that the two stockholders did contribute large amounts in cash to the petitioner and made other contributions of assets. With the money, stocks, principally, if not wholly, of domestic corporations, and some bonds were purchased. In the taxable years the dividends received from domestic corporations were deducted.

Was the purpose of the individuals to escape surtax by causing the corporation to accumulate its gains and profits? It did so accumulate its undivided profits through the taxable years. Petitioner argues that such accumulation was within the reasonable needs of its business, that the former partnership had had about \$1,500,000 invested, and that the same was reasonably necessary. The evidence does not, we think, bear out petitioner's contention. The witness above referred to said that the same amount would be necessary "today," i. e., at the date of hearing, in 1939. What the reasonable requirements of the business were in 1932, 1933 and 1934 is left by the record to conjecture. Indeed, what little is shown as to the taxable years indi-

cates that there was no reasonable business need for the accumulations, for W. T. Wilson when asked to explain "why you did not reenter such business before the years '32, '33 and '34, or during those years," responded that in the logging business losses were heavy, that in the manufacture of lumber the sawmills were taking big losses and "It would be unprofitable to go into a business which was losing business." Elsewhere he said that business was depressed, no building was going on and that it was very hard to sell lumber. Again he testified to the purpose "to reengage" in the shipping and lumber business. Though these statements almost put the company out of business in the taxable years, we think that such can not fairly be said, for some business was conducted. They do, however, in [57] our opinion, prove an intent not to reenter a losing business during the period of such losing business and depression, and demonstrate that the small undivided profits accruing largely from security holdings can not reasonably be said to have been accumulated as a reasonable business necessity. There is no evidence as to how the money would be expended, or of any intent to go into business to the same extent as had the partnership a few years earlier. A mere comparison with an earlier partnership business constitutes no sufficient showing of the financial needs of the corporation in the taxable years. Petitioner disproves, rather than proves, reason for not paying dividends during the taxable years. It might have been that looking into

the long future and comparing with the business of the partnership in 1928 and earlier years, the petitioner's officers might have wished to accumulate, not only the capital contributions, and securities in which they were invested, but the undivided profits from dividends from domestic corporations. But we think no showing has been made of any immediate, or reasonably immediate, need for conserving both the large amounts of securities and the comparatively small amount of undivided profits. It can not reasonably be thought, with the depression so seriously affecting the shipping and lumber industry as petitioner shows, that the company would suddenly find conditions so changed as to require liquid assets to the full extent of not only its large assets, but its current gains and profits. After a painstaking study of the often confusing and contradictory record, we come to the conclusion that the petitioner has not adduced the proof necessary to meet its burden of proof. This conclusion is strengthened by the manner in which the corporation dealt with its two sole stockholders. If there was reasonable business reason to accumulate the undivided profits, why was F. A. Wilson permitted to have credit as shown by accounts receivable from him of \$43,234.37 at the end of 1933 when undivided profits were reported as \$36,732, and of \$35,612.50 at the end of [58] 1934 when undivided profits were reported as \$25,447.64? It is plain that the two stockholders dealt with their corporation much as they desired. There is no showing of the financial

responsibility of F. A. Wilson for the credit he enjoyed from his corporation. Indeed, no consistent record was even kept of the matter. Though an account receivable set up as to him individually showed the above figures, on the general ledger trial balances placed in evidence, he is listed among bills receivable with \$28,091.96 as the amount on December 31, 1933—instead of \$43,234.37 as above seen, and on the list of accounts receivable of petitioner as at December 31, 1933, placed in evidence by petitioner, no item as to F. A. Wilson appears. Likewise, “W. Wilson,” whom we think it reasonable in the absence of explanation to assume to be W. T. Wilson, the other stockholder, also owed the corporation as follows: December 31, 1932—\$17,717.88; December 31, 1933—\$16,917.88; December 31, 1934—\$16,917.88. He reduced the amount only \$800 in two years. In our opinion the petitioner presents a picture similar in outline to that in Rands, Inc., 34 B. T. A. 1094, where we commented upon the financial dealings between a sole stockholder and his corporation and the fact that had he employed his funds instead of lending them to the corporation, he would have had substantial taxable income. The categorical denial of intent to avoid surtax, by the Witness W. T. Wilson, must be compared with his earlier sworn statements in the income tax returns and the manner in which petitioner’s books were balanced perfectly by use of fictitious cash, common and treasury stock and notes payable. We hold that the petitioner was availed of in the taxable

years for the purpose of preventing imposition of surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed. [59]

VI. The respondent further determined as to each taxable year that the petitioner was subject to the 5 per cent negligence penalty under section 293 of the Revenue Acts of 1932 and 1934. The facts above set forth and reviewed in connection with the discussion of section 104 are here applicable with at least equal force. The remarkable way in which the petitioner kept its record and made its returns, setting up false statements as to large amounts of cash as to notes receivable and as to amount of capital stock, maintaining no cash book, and no record of I. O. U.'s owing by its stockholders, requires the application of the negligence penalty. The cases cited by petitioner as to honest mistake or misunderstanding do not apply to books kept in the manner prescribed by the principal witness herein. Obviously, a part of the deficiency was due to "negligence or intentional disregard of rules and regulations" without which the tax in this case could have been ascertained without all of the difficulty encountered. We hold that the Commissioner did not err in the application of the 5 per cent negligence penalty under section 293.

Decision will be entered under Rule 50.

Enter:

Entered May 22, 1940. [60]

United States Board of Tax Appeals
Washington

Docket No. 93668.

WILSON BROTHERS & CO.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Pursuant to the Memorandum Opinion of the Board entered May 22, 1940, the respondent herein having on June 20, 1940, filed a recomputation of the tax, and the petitioner having on July 22, 1940, filed an acquiescence in said recomputation, now, therefore, it is

Ordered and decided: That there are deficiencies in normal tax and surtax and a penalty for the year 1934 as follows:

Normal Tax—\$1,912.05.

Additional Tax under section 102, 1934 Act—
\$9,740.70.

Penalty—\$582.63.

Enter:

[Seal]

(Signed) R. L. DISNEY,
Member.

Entered Aug. 6, 1940. [61]

[Title of Board and Cause.]

PETITION FOR REVIEW OF DECISION OF
THE UNITED STATES BOARD OF TAX
APPEALS BY THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

To the Honorable, The Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Wilson Brothers and Company (properly entitled
Wilson Bros. & Co.), your petitioner, pursuant to
the provisions of Sections 1141 and 1142 of the In-
ternal Revenue Code respectfully petitions this Hon-
orable Court to review the decision of the United
States Board of Tax Appeals entered on the 6th day
of August, 1940, and finding deficiencies in income
tax, together with additional tax under Section 102
of the Revenue Act of 1934, and a negligence pen-
alty under Section 293(a) of said Act in the total
of \$12,235.38 for the taxable calendar year 1934. [62]

I.

Jurisdiction

Your petitioner is a corporation organized under
the laws of the State of Nevada, having, during the
taxable years involved, its principal office and place
of business in the City and County of San Fran-
cisco, State of California. Petitioner timely filed its
Federal income tax returns in respect to which the
aforementioned tax liabilities arose with the Col-
lector of Internal Revenue, 1st District of Califor-
nia, located in the City and County of San Fran-

cisco, State of California, which is situated within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

II.

Prior Proceedings

The Commissioner of Internal Revenue, by his letter dated December 30, 1935, asserted a deficiency in petitioner's tax liability for the year 1932 in the sum of \$11,343.36 and a penalty of five per centum in the amount of \$567.17, he also asserted a deficiency in petitioner's tax liability for the year 1933 in the sum of \$22,078.01 and a penalty of five per centum in the amount of \$1,103.90. By his letter of March 8, 1938, the Commissioner asserted a deficiency in petitioner's tax liability for the year 1934 in the sum of \$13,632.27 and a penalty of five per centum in the amount of \$681.61.

Thereafter, and within the times prescribed by law, the petitioner filed with the United States Board of Tax Appeals its petitions under the aforesaid two letters requesting the redetermination of such deficiencies. The proceedings duly came on for hearing on June 6, 1939, at which time the two proceedings were consolidated for hearing. The proceedings were submitted to the Board upon a written stipulation of facts, oral testimony of witnesses and documentary evidence applicable to the two proceedings.

Thereafter, and on May 22, 1940, the United States Board of Tax Appeals made its report and rendered a memorandum opinion, through a single

member sitting as Division No. 4 of said Board, approving in part the determinations of the Commissioner.

Thereafter and on August 6, 1940, decisions were made and entered in each of the two proceedings by the United States Board of Tax Appeals whereby final orders of redetermination of deficiencies for the respective years involved were made and entered as follows:

Year	Normal Tax	Additional Tax Under Section 104, 1932 Act and Section 102, 1934 Act	Penalty
1932	None	\$ 3,316.84	\$165.84
1933	\$1,499.93	14,224.80	786.24
1934	1,912.05	9,740.70	582.63

III.

Statement of the Nature of the Controversy

This proceeding is for the year 1934 (Docket No. 93368) and involves income taxes, together with sur-tax alleged under the provisions of Section 102 of the Revenue Act of 1934 and a five per centum penalty for asserted negligence under Section 293(a) of said Act, for the taxable calendar year 1934.

The controversy between petitioner (appellant before the Court) and the Commissioner of Internal Revenue involves several issues which, for the years involved, will be presented [64] in the order in which they are discussed in the report or memorandum opinion of the Board of Tax Appeals.

1. (Issue III(a) in the report memorandum opinion) Whether petitioner was entitled to write

off and deduct as a partially worthless or bad debt for the taxable year 1934 the amount of \$5,000. from the sum of \$43,276.06 owed to it by the Woodhead Lumber Co. of California.

2. (Issue III(c) in the report or memorandum opinion) Whether petitioner was entitled to write off and deduct as a partially worthless or bad debt for the taxable year 1934 the amount of \$5,500. with respect to bonds of Kentucky Fuel Gas Corporation, a bankrupt corporation.

3. (Issue IV(a) in the report or memorandum opinion) Whether the basis for depreciation of petitioner's 75% interest in the steamship "Idaho" adjusted to January 1, 1932 is \$52,466.67 as determined in the memorandum opinion, or \$91,466.67. This issue is one of law and arises from the difference between the cost (\$40,000) of said interest to Henry Wilson and its value (\$79,000) on February 6, 1917 when he made a gift thereof to his wife, Mary H. Wilson, who in turn made a gift thereof to petitioner on January 2, 1929.

4. (Issue V in the report or memorandum opinion) Whether the petitioner corporation was availed of during the taxable years involved for the purpose of preventing imposition of surtax upon its two shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.

5. (Issue VI in the report or memorandum opinion) Whether the petitioner was subject to the five per centum negligence [65] penalty under Section 293(a) of the Revenue Act of 1934.

Due in part to the fact that the report or memorandum opinion of the Board subdivides its findings as it subdivides its opinion on the several issues, thereby disregarding findings of fact made on some issues material to other issues, a consideration of the evidence as well as a consideration of all of the facts found is necessarily involved in the review of the Board's decision.

IV.

Assignments of Error

In assigning the errors which petitioner believes to have been committed by the United States Board of Tax Appeals, assignment is made in the order in which the issues were decided and numbered in the report or memorandum opinion of the Board entered May 22, 1940, for the two proceedings docketed and numbered 83,397 and 93,668. For convenience of reference, the issues as considered in the report or memorandum opinion are designated by the Roman numerals, employed in subdividing said report or memorandum opinion into separate parts. No assignments of error are made to issues I and II considered in said report or memorandum opinion.

Petitioner assigns as error the following acts and omissions of said United States Board of Tax Appeals:

III.

(1) The failure to find and determine that the \$43,276.06 account receivable due from the Woodhead Lumber Co. of California was impaired during the year 1934 in at least the amount (\$5,000.00)

charged off by petitioner in said year against said account as a partial bad debt. [66]

(2) The failure to find and determine that petitioner had fully met its burden of proving error on the part of respondent in disallowing the claimed deduction of such partial bad debt, such disallowance being predicated entirely on the false assumption that no direct write-off had been made of said \$5,000.

(3) The making of a purported finding of fact contrary to the evidence, record and issue involved as follows:

“Upon consideration of the entire record we find and determine that the alleged worthless character of the debt from the Woodhead Lumber Co. of California has not been shown. We therefore find and hold that the Commissioner did not err in disallowing the \$5,000 deduction claimed.”

(4) The failure to find that the cost to petitioner of its bonds of the Kentucky Fuel Gas Corporation were impaired during the year 1934 in at least the amount (\$5,500) charged off by petitioner in said year against the cost of said bonds as a partial bad debt.

(5) The failure to find and determine that petitioner had fully met its burden of proving error on the part of respondent in disallowing the claimed deduction of such partial bad debt, such disallowance being entirely predicated entirely on the false assumption that no direct write-off had been made of said \$5,000.

(6) The making of a purported finding with respect to the deduction of said \$5,500 contrary to the evidence, record and issue involved as follows:

“Obviously such a record does not show error on the part of the Commissioner in denying the deduction.”

IV.

(7) The failure to allow as a basis for depreciation on the Steamship “Idaho” from January 1, 1932, the amount of \$91,377.78 [67] and to determine that petitioner was entitled to deduct depreciation on said steamship for each of the taxable years 1932, 1933 and 1934 in the amount of \$6,100.77 per annum.

(8) The failure to allow as a part of the basis of depreciation of the Steamship “Idaho” from January 1, 1932, the amount of \$79,000. as the fair market value of a twenty per cent interest therein given to Mary H. Wilson on February 6, 1917, by her husband, at which time said steamship had a fair market value of \$395,000., which said twenty per cent interest was donated to petitioner by said Mary H. Wilson on January 2, 1929.

(9) The determination that the basis (unadjusted) of property acquired by gift prior to December 31, 1920 is changed from the value at the time of said gift to cost to the donor of said gift when said property is made the subject matter of a gift by said donee after December 31, 1920.

V.

(10) The making of a purported finding with respect to all of the taxable years involved and with-

out discrimination between the circumstances and facts relating to each of the years 1932, 1933, and 1934, to the effect:

“We hold that the petitioner was availed of in the taxable years for the purpose of preventing imposition of surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.”

when in fact the record and that part of the record considered in the report or memorandum opinion with respect to such finding is contrary to such finding and said finding is inconsistent with other findings upon which it is purportedly based.

(11) The determination that for the taxable year 1932 petitioner is liable under the alleged authority of Section 104(a) of the [68] Revenue Act of 1932 in the amount of \$3,316.84 as a surtax for the alleged accumulation of surplus contrary to the provisions of said section.

(12) The determination that for the taxable year 1933 petitioner is liable under the alleged authority of Section 104(a) of the Revenue Act of 1932 in the amount of \$14,224.80 as a surtax for the alleged accumulation of surplus contrary to the provisions of said section.

(13) The determination that for the taxable year 1934 petitioner is liable under the alleged authority of Section 102(a) of the Revenue Act of 1934 in the amount of \$9,740.70 as a surtax for the alleged accumulation of surplus contrary to the provisions of said section.

(14) In making the determinations complained of in assignments 10 to 13 hereof inclusive, the failure to consider the true earned surplus of petitioner as distinguished from its taxable earnings and profits as determined in the report or memorandum opinion.

(15) In making the determinations complained of in assignments 10 to 13 hereof, inclusive, the failure to make any finding as to what surplus, if any, petitioner had accumulated in each of the taxable years involved.

VI.

(16) The determination that for the taxable year 1932 petitioner is liable for a negligence penalty under the alleged authority of Section 293(a) of the Revenue Act of 1932 in the amount of \$165.84, when the record does not disclose that any part of the deficiency determined was "due to negligence or intentional disregard of rules and regulations". [69]

(17) The determination that for the taxable year 1933 petitioner is liable for a negligence penalty under the alleged authority of Section 293(a) of the Revenue Act of 1932 in the amount of \$785.24, when the record does not disclose that any part of the deficiency determined was "due to negligence or intentional disregard of rules and regulations".

(18) The determination that for the taxable year 1934 petitioner is liable for a negligence penalty under the alleged authority of Section 293(a) of the Revenue Act of 1934 in the amount of \$582.63, when the record does not disclose that any part of the de-

iciency determined was "due to negligence or intentional disregard of rules and regulations".

General

(19) The failure to make comprehensive and generally applicable findings of facts which would apply equally to all issues involved in the proceedings and be adequate for proper determination of all the issues involved.

(20) The setting forth separately in the report or memorandum opinion in connection with the discussion and determination of each of the issues involved therein of inadequate facts to support the conclusions reached in such opinion on the majority of said issues.

(21) The severance of facts in the relation to each of the issues discussed and determined in the report or memorandum opinion so that purported findings with regard to one issue do not have application to the other issues involved.

(22) The determination of separate issues without regard to facts found to be true with respect to other issues involved in the proceedings. [70]

(N.B. The errors numbered 19, 20, 21 and 22 are manifest from a reading of the report or memorandum opinion on the various numbered issues and from the following express language of the opinion:

"Certain issues as to depreciation upon wooden buildings and automobiles have been settled by stipulation which will be reflected in decision under Rule 50. The other issues will be

considered in the order above set forth, *the facts*, except the general facts as to incorporation stated above, *being set forth separately in connection with the discussion of each issue.* (Italics supplied.)

(23) The intermingling of findings of fact, conclusions as to facts and conclusions of law in such manner as to render the decision of the Board in its report or memorandum opinion arbitrary and theoretical.

(24) In making its findings of fact and conclusions of law therefrom the Board failed to make findings of fact in conformance with the evidence.

Wherefore, the petitioner prays that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with law and the rules of said Court for filing, and that appropriate action be taken to the end that the errors complained of herein be reviewed and corrected by said Court.

WILSON BROS. & CO.

By FRANCIS A. WILSON,

President.

ADOLPHUS E. GRAUPNER

LOUIS JANIN

Counsel for Petitioner

1110 Balfour Building,

San Francisco, California. [71]

State of California,
City and County of San Francisco—ss.

Francis A. Wilson being first and duly sworn says, I am president of Wilson Bros. & Co., the petitioner and appellant above-named; that I have read the foregoing petition for review and know the contents thereof and the facts set forth therein are true as I verily believe; that said petition is filed in good faith and not for purposes of delay.

FRANCIS A. WILSON

Subscribed and sworn to before me this 29th day of October, 1940.

[Seal] ELEANOR J. SMITH,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Dec. 31, 1942. [72]

[Endorsed]: U. S. B. T. A. Filed Oct. 31, 1940.

[Title of Board of Cause.]

AFFIDAVIT OF SERVICE BY MAIL

Louis Janin, being first duly sworn, deposes and says:

That he is a citizen of the United States, and over the age of 21 years, and not a party to the above-entitled proceedings. That on this 30th day of October, 1940, he deposited in the United States Post Office in San Francisco, California, addressed to the Commissioner of Internal Revenue, Internal Reve-

nue Building, Washington, D. C., a copy of petition for review in the above-entitled proceedings, together with a notice of mailing petition for review, addressed to said Commissioner of Internal Revenue, and to John P. Wenchel, Chief Counsel, Attorney for Commissioner. That said copy of petition and notice for filing petition were enclosed in an envelope addressed to the Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C., with air mail postage prepaid thereon for immediate and prompt delivery.

LOUIS JANIN.

Subscribed and sworn to before me this 30th day of October, 1940.

[Notarial Seal] EDITH VIA,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: U. S. B. T. A. Filed Oct. 31, 1940. [73]

[Title of Board and Cause.]

To Commissioner of Internal Revenue, and to John P. Wenchel, Chief Counsel, Attorney for Respondent, Bureau of Internal Revenue Building, Washington, D. C.:

You are hereby notified that on this 31st day of October, 1940, a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the United States Board of

Tax Appeals, heretofore rendered in the above-entitled cause, was mailed by air mail to the Clerk of said Board. A copy of the petition as filed is attached hereto, and served upon you.

Dated: This 30th day of October, 1940.

ADOLPHUS E. GRAUPNER

LOUIS JANIN

Service of the foregoing notice of filing and of a copy of the petition for review is hereby acknowledged this 31st day of October, 1940.

J. P. WENCHEL

Chief Counsel, Bureau of

Internal Revenue,

Attorney for Respondent.

[Endorsed]: U. S. B. T. A. Filed Nov. 1, 1940. [74]

[Title of Board and Cause.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

In compliance with paragraph (d) of Rule 75 of the Rules of Civil Procedure for the District Court of the United States as made applicable for review of a decision of the United States Board of Tax Appeals by Rule 30 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit the above-named petitioner herewith states the points on which it intends to rely on the pending

petition for review of the decision of said Board in the above-entitled proceeding.

Petitioner will rely upon all of the assignments of error set forth in the petition for review of decision in the above-entitled proceedings by the United States Circuit Court of Appeals for the Ninth Circuit filed with the United States Board of Tax Appeals on October 31, 1940.

With respect to the above-entitled proceeding involving the taxable calendar year 1934 and, as a necessary incident the [75] years 1932 and 1933 a concise statement of the points involved in the appeal is as follows:

1. The Board erred in determining that for the year 1934 petitioner was not entitled to write-off and deduct as a partial bad debt the amount of \$5,000 of a total of \$43,276.06 owing to it from the Woodhead Lumber Co. of California.

2. The Board erred in determining that for the year 1934 petitioner was not entitled to write-off and deduct as a partial bad debt at least the amount of \$5,500 on the impaired value of bonds of the Kentucky Fuel Gas Corporation.

3. The Board of Tax Appeals erred in failing to allow petitioner a valuation, as a basis for depreciation on the Steamship "Idaho" from January 1, 1932, of the amount of \$91,377.78 and to determine that petitioner was entitled to deduct depreciation on said steamship for each of the taxable years 1932, 1933 and 1934 in the amount of \$6,100.78 per annum. Such error resulted from failure to deter-

mine as a part of the basis of depreciation, the amount of \$79,000 as the fair market value of a twenty per cent interest in said steamship given to Mary H. Wilson on February 6, 1917, and by her donated to petitioner on January 2, 1929.

4. The Board of Tax Appeals erred in finding with respect to all the taxable years involved, viz: 1932, 1933 and 1934, as follows:

“We hold that the petitioner was availed of in the taxable years for the purpose of preventing imposition of surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.”

and further erred in determining that for the year 1932 petitioner is liable under Section 104(a) of the Revenue Act of 1932 for [76] \$3,316.84 as a surtax for alleged accumulation of surplus; also, it further erred in determining that for the year 1933 petitioner is liable under the aforesaid section for \$14,224.80 as a surtax for alleged accumulation of surplus; also, it further erred in determining that for the year 1934 petitioner is liable under Section 102(a) of the Revenue Act of 1934 for \$9,740.70 as a surtax for the alleged accumulation of surplus.

In making such determinations the Board failed to consider petitioner's true earned surplus as distinguished from its taxable earnings and profits as determined in the report or memorandum opinion and, also, failed to make any findings as to what

surplus, if any, petitioner had accumulated in each of the taxable years involved.

5. The Board erred in determining that for the taxable year 1934 petitioner is liable for a negligence penalty under Section 293(a) of the Revenue Act of 1934 when the record does not disclose that any part of the deficiency determined in said year was "due to negligence or intentional disregard of rules and regulations."

6. The Board erred in failing to make comprehensive or general finding of facts applicable to all issues involved and further erred in segregating and separating the findings made so that findings made on one issue, although properly material and applicable to other issues, are made inapplicable to other issues to which they are material and controlling as is evidenced by the following preliminary statement in the report or memorandum opinion.

"Certain issues as to depreciation upon wooden buildings and automobiles have been settled by stipulation which will be reflected in decision under Rule 50. The other issues will be considered in the order above set forth, *the facts*, except the general facts as to in- [77] corporation stated above, *being set forth separately in connection with the discussion* of each issue." (Italics supplied).

The Board further erred in failing to make findings of fact in conformance with the evidence, and in intermingling, as findings of fact, facts, conclusions

as to facts, and conclusions of law in such manner as to conflict with the record and the law.

ADOLPHUS E. GRAUPNER
LOUIS JANIN

Attorneys for Petitioner,
1110 Balfour Building,
San Francisco, California.

Admission of service of the foregoing statement of points on which petitioner intends to rely is hereby admitted this 11th day of March, 1941.

J. P. WENCHEL

Chief Counsel, Bureau of Internal Revenue,
Attorney for Respondent on Review.

[Endorsed]: U. S. B. T. A. Filed March 11, 1941.

[78]

United States Board of Tax Appeals
Docket No. 83397 and Docket No. 93668

WILSON BROTHERS and COMPANY (Wilson
Bros. & Co.), a corporation,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

REVISED STATEMENT OF THE EVIDENCE

The above entitled and numbered proceedings came on for consolidated hearing before the Honorable Richard L. Disney, Member of the United

States Board of Tax Appeals, on June 6th and 7th, 1939, at the City and County of San Francisco, State of California.

The following represents a narrative statement of the evidence submitted to said United States Board of Tax Appeals at said times and place.

A consolidated partial stipulation of facts was filed for both proceedings and the respective deficiency notices for the two proceedings were admitted in evidence and marked Petitioner's Exhibits No. 1 and 2. (These Exhibits are respectively Exhibits A to the two petitions on file in the [79] above entitled proceedings).

WINFRED T. WILSON

was called as a witness by and on behalf of the petitioner and having been first duly sworn testified on June 6th, 1939, in substance as follows:

Direct Examination

I am a shareholder and the secretary and treasurer of the petitioner corporation and am familiar with and identify the corporation's income tax returns for each of the calendar years 1932, 1933, and 1934. (Whereupon said returns were offered and admitted in evidence and marked respectively Petitioner's Exhibits No. 3, No. 4 and No. 5.) I was secretary and treasurer of the corporation during the years 1932, 1933 and 1934 and my brother Francis A. Wilson was the president. I performed the general duties of a secretary and treasurer and, in addition, kept the books.

(Testimony of Winfred T. Wilson.)

The corporation was organized in December of 1928 to engage in the logging business, the manufacture of lumber, the transportation of lumber, the operation of steamships as a part of the logging and lumber business, the buying and selling of lumber, and engaging in the general lumber business. My brother and I had been continuously and actively engaged in the lumber business since 1906.

It was never intended that the corporation was to be organized as a holding investment company. My brother and I never discussed the element of taxation as a reason for forming [80] the corporation. Subsequent to the year of organization of the corporation, including the years 1932, 1933 and 1934, by brother and I never discussed the use of the corporation for any Federal tax purposes or for any special tax purposes. Nor during the years 1929 to 1934 inclusive did my brother and I discuss or reach any conclusion that the corporation was to be availed of for accumulating surplus or avoiding surtax.

No stock of the corporation was ever issued beyond the forty shares subscribed for by my brother and myself when the corporation was formed. The corporation never declared any dividends in either cash or stocks and paid no compensation to its officers from the time of its organization through the taxable years involved because the earnings were insufficient to pay dividends and the assets were impaired.

(Testimony of Winfred T. Wilson.)

I kept the books of account of the corporation during the years 1932, 1933 and 1934 and have such books with me. Here is the stock record and certificate book; the articles of incorporation and the corporate record of Wilson Brothers & Company; the bank books of the Crocker First National Bank, Wells Fargo Bank; statements of the Bank of America, Crocker First National Bank and Wells Fargo Bank; sales books for 1932, 1933 and 1934; the journal for those years, and the ledger. The books were kept on an accrual basis. We did not keep a cash book because the transactions were too few. Instead, when we sent out a bill for lumber we sent out two bills and when the customer paid he sent back one of the bills which was our [81] record of payment. Then the payment was entered in the ledger and deposited in bank. Where some customers did not send back bills, they sent us voucher checks and we kept the voucher on the end of the check. All cash received went into the bank accounts except now and then a small check would be cashed for petty cash. The vouchers received and the bank books took the place of the cash book. The journal was kept in such manner that it reflected the ordinary transactions made by the corporation, although it did not reflect all of the cash transactions, because the volume of business was so small that it was not necessary. The ledger reflected the business transactions of the corporation during the three years involved and correctly stated the cash

(Testimony of Winfred T. Wilson.)

position of the corporation at the opening and closing of each of said three years.

The witness was then shown a paper (afterwards admitted as Petitioner's Exhibit No. 6) prepared from the ledger, bank books and bank accounts, which showed the cash status of the corporation at the beginning and end of each of the years involved as follows:

Bank	1-1-32	12-31-32	12-31-33	12-31-34
San Francisco Bank.....	\$403,750.00	\$51,324.00	None	None
Crocker 1st Natl. Bk.....	-25.25	23,989.81	\$ 539.04	\$ 142.48
Wells Fargo Bank.....	320.83	21,324.42	8,647.39	21,415.06
Bank of America.....	259.79	None	None	52,149.82
Anglo-Cal. Natl. Bank.....	4,694.28	None	None	None
Total.....	<u><u>\$408,999.65</u></u>	<u><u>\$96,638.23</u></u>	<u><u>\$9,186.43</u></u>	<u><u>\$73,707.36</u></u>

[82]

Other than petty cash, the corporation had no money elsewhere than in the above-listed banks.

In the balance sheets forming a part of the income tax returns for the three taxable years involved cash was shown thereon as follows:

December 31, 1931.....	\$1,642,498.24
December 31, 1932.....	1,106,377.07
December 31, 1933.....	1,022,123.45
December 31, 1934.....	972,145.49

The above cash statements contained in the returns were not correct and did not correspond with the cash position as shown in the ledger. The difference between the amounts shown in the ledger and those shown in the returns was represented by

(Testimony of Winfred T. Wilson.)

I.O.U.s which my brother and I placed in the cash box and carried as cash. Those I.O.U.s did not represent any money borrowed from the corporation and our intent in putting them into the cash box was that some day my brother and I might make enough money to pay them up and we would have a good sized corporation. We wanted to show a great deal of assets. From time to time my brother and I did make contributions on these I.O.U.'s. The money was deposited in bank, entries were made in the books. The amount paid in on an I.O.U. was deducted from it, showing a smaller I.O.U. In other words we destroyed one I.O.U. and then inserted the smaller one in its place. The cash position shown on the returns was out of balance with the cash position shown by the ledger and the bank account to the difference of [83] the face value of the I.O.U.s, and the amount of cash paid on such I.O.U.s.

The misstatement of the cash position on the second page of the corporation's returns in each of the taxable years did not effect its taxable income or the deductions from taxable income reported.

The witness was handed four papers or lists (afterward admitted as Petitioner's Exhibits Nos. 7, 8, 9 and 10) which he identified as the complete record of stocks of domestic corporations held and owned by petitioner as of January 1, 1932, December 31, 1932, December 31, 1933, and December 31, 1934.

(Testimony of Winfred T. Wilson.)

The costs shown on the lists, are the true costs of the stock to the corporation and correspond with the costs shown by the ledger entries. All of the stocks were acquired by purchase for cash. The approximate market values of the stocks set forth in the four lists at the beginning and end of each of the years involved, excepting the stock of Weeden & Co., were taken from the Financial Chronicle and other recognized journals recording sales and transactions in the stock and bond markets of the United States. The market value of the stock of Weeden & Co., which is not a listed stock, was obtained from that company which acts as broker in buying and selling its own stock for clients or buying for itself. The totals of cost and approximate market values of the stocks of domestic corporations owned by petitioner as shown by said Exhibits 7, 8, 9 and 10 for the opening and closing of each of the taxable years [84] herein involved are respectively as follows:—

Date	Cost	Approximate Market Value
January 1, 1932.....	\$516,670.00	\$273,115.12
December 31, 1932.....	750,943.50	434,961.87
December 31, 1933.....	782,190.55	777,792.00
December 31, 1934.....	837,778.05	810,797.75

The witness was handed a paper or list (afterward admitted as Petitioner's Exhibit No. 11, except as to data on bonds of Kentucky Fuel Gas Corporation) which he identified as showing all of the bonds owned by petitioner. The cost of the bonds

(Testimony of Winfred T. Wilson.)

shown on the list is the cost as shown by petitioner's ledger. The market value as of the respective dates was obtained from the brokers who sold the bonds to petitioner and checked against quotations of the market for the bonds in the New York Financial Chronicle. The totals of cost and market value of said bonds (exclusive of market value of Kentucky Fuel Gas. Corp. bonds) for the opening and closing of each of the taxable years as shown by said Exhibit 11 are as follows:

Date	Cost	Market Value
January 1, 1932.....	\$ 3,975.00	\$ 3,680.00
December 31, 1932.....	3,975.00	4,000.00
December 31, 1933.....	3,975.00	4,000.00
December 31, 1934.....	20,775.00	22,800.00

On January 2, 1929, Mary H. Wilson, W. T. Wilson and F. A. Wilson conveyed to petitioner a seventy-five percent [85] interest in the Steamship "Idaho" and a one-hundred percent interest in the Steamship "Oregon" as a contribution without consideration. (Bills of Sales of Enrolled Vessels for each of the interests so conveyed were admitted in evidence and marked Petitioner's Exhibit Nos. 12 and 13.) Mary H. Wilson, one of the grantors above named, was the mother of W. T. Wilson and Francis A. Wilson.

The vessels were acquired for the purpose of transporting lumber for the corporation and there was no intent to use those vessels for any other purpose. The vessels were employed in the lumber

(Testimony of Winfred T. Wilson.)

business for five or six months after January 2, 1929. Then business got very bad and we were unable to obtain cargoes that could be sold at a profit so we laid the vessels up.

Five or six months after January, 1929, we had a great panic or depression in the country and it continued in the lumber and shipping business through the years 1932, 1933 and 1934. The company continued its ownership of those ships during all that period for the purpose of operating them as soon as conditions would permit. During the three years in these proceedings involved the vessels were docked in the Oakland Estuary or the Alameda Estuary.

(The remainder of the testimony on pages 42 to 47 of the official report relates to deductions for maintenance of the vessels as found and allowed in issue II in the Memorandum Opinion of the Board, from which no appeal is taken.) [86]

(Testimony regarding additional interest claimed against petitioner on pages 48 and 49 of the reporters transcript of testimony is omitted because no appeal is taken from issue I in the Memorandum Opinion of the Board.)

During the years 1932 to 1934 the corporation charged off particular items as bad debts. The books showed a reserve for bad debts but that reserve was not in excess of the particular items charged off. (Testimony regarding a charge-off of \$2,160. on account of the Steamship "Svea" follows

(Testimony of Winfred T. Wilson.)

on pages 51 to 55 is omitted because no appeal is taken on that item which forms part (b) of issue III in the Memorandum Opinion of the Board.)

On December 31, 1934, the corporation wrote off \$5,000. as a partial loss on account of the financial condition of the Woodhead Lumber Company of California. I went to Los Angeles and went over the books of the company and found it was in very bad shape. There was a heavy mortgage on the assets. There was a bond issue of about \$200,000. which came ahead of everything else. The bonds and the interest preceded the general creditors and that was on a specific piece of land. The balance of the assets consisted of accounts receivable which I judged "were no good". The improvements and the lumber business were on rented property which was held on a month to month basis and if it were thrown off that property those improvements would be practically worthless. The only hope of recovery was if business conditions kept on improving so the [87] company could make money they could pay out. After a careful examination of the books I determined that with the best advantage to the company our corporation would lose \$5,000. and I wrote that amount off the corporation books in 1934 as being a reasonable deduction for partial loss on account of the Company's indebtedness to our corporation. We have never recovered that \$5,000. Since 1934 the Woodhead Lumber Company of California went along as a business until it

(Testimony of Winfred T. Wilson.)

formed another corporation which took over a part of the assets. The old company started to lose some of their other assets through foreclosure and assignments due to agreements which it had and which preceded our account, in other words the company owned some houses on which there were mortgages and the mortgages were preferred against us so that a good many of the assets disappeared that way. The financial status of the company was worse in after years than at the time I investigated in 1934 and became steadily worse, it was in default on its bonds and was unable to pay the interest on the bonds.

In the year 1934 we charged off \$5,500. as a partial loss on bonds of the Kentucky Fuel & Gas Corporation which our corporation owned. We made the charge-off because the company went into a receivership and it appeared that we would not recover the full amount but would take a loss in the amount charged-off. I made an investigation through the people who issued the bonds and that was their opinion. I had a list of the assets and liabilities of the corporation and in studying [88] the balance sheet it appeared that "there certain assets that were O. K. and that there would be some recovery due to that fact." I discussed the matter with my brother, the other stockholder of our corporation, and we reached the determination that the situation of the Kentucky Fuel & Gas Corporation looked pretty bad and that the amount of \$5,500. should

(Testimony of Winfred T. Wilson.)

be written off as there was no way to get it back. We did not come to the conclusion that the bonds were entirely worthless; the bonds were a first mortgage on the property of the company and there must have been some residue for the bondholders because it was an operating company with considerable assets. That amount was written off in 1934.

(Testimony regarding deduction for depreciation of furniture and fixtures in pages 62 to 67 of the reporter's transcript is omitted because no appeal is taken on that issue which is decided as subdivision (c) of issue IV in the Memorandum Opinion of the Board.)

Petitioner was the owner of 75/100ths interest in the steamship "Idaho" and a 100 per cent interest in the Steamship "Oregon" during the taxable years involved. It was a practice of the shipping trade on the Pacific Coast during the years 1916, 1917, and 1918 and since that time to have vessels owned in shares and a fractional interest in a vessel was valued at its proportion to the value of the vessel as a whole. That is, a one-tenth share in a vessel would be equal in value to one-tenth of the vessel. [89]

On February 6, 1917, my father, Henry Wilson gave my mother, Mary H. Wilson a 20/100ths interest in the Steamship "Idaho" and 5/100ths interest to each of my brother, F. A. Wilson, and me, or a total of 30/100ths. The value of such interests on said date was in proportion to the value of the

(Testimony of Winfred T. Wilson.)

boat, which was \$395,000. as set by the United States Board of Tax Appeals. These interests continued to be held by my mother, my brother and myself until January 2, 1929, when they were given "as a contribution without consideration" to the petitioner corporation. On January 6, 1924, my father gave my mother an additional 35/100ths interest in the Steamship "Idaho". The bill of sale (Exhibit A to Stipulation, marked for the record as Petitioner's Exhibit 15) recites a consideration of \$10.00, but the transfer was a gift without consideration. In July, 1925, my brother and I each acquired an additional 5/100ths interest in the Steamship "Idaho" by purchase we paid a total of \$11,716.67 for the 10/100ths interest owned by Mr. Johnson, each of us paying one-half. This purchase gave each of my brother and me 10/100ths interest in the Steamship "Idaho" while my mother owned 55/100ths, making the seventy-five percent interest in the vessel which we transferred to the petitioner corporation on January 2, 1929, as "a contribution without any consideration".

On December 4, 1918, my father gave to each of my brother and me a 5/32ds interest in the wooden Steamship "Oregon". (Deeds of gift for 5/32nds interest in said vessel dated January 10, 1918, by Henry T. Wilson and Mary H. Wilson [90] to each of Winfred T. Wilson and Francis A. Wilson were admitted in evidence and respectively marked Petitioner's Exhibit 16 and Petitioner's Exhibit 17.)

(Testimony of Winfred T. Wilson.)

These instruments were executed and delivered on account of "my father's wish to make us members of the firm". At the time the deeds of gift were made to my brother and me and from the time the boat was constructed it had been owned in the following shares:— My father, Henry Wilson, owned 15/32nds; A. B. Johnson owned 2/32nds and the C. R. Wilson Estate, Incorporated, owned 15/32nds. On January 6, 1924, my father gave my mother, Mary H. Wilson a 10/32nds interest in the "Oregon". My brother and I each purchased a 1/32nds interest in the "Oregon" from A. B. Johnson for a total consideration of \$4,954.72. (The Stipulation of Facts shows that on September 30, 1919, each of Henry A. Wilson, F. A. Wilson and W. T. Wilson acquired a 5/32nds interest in the "Oregon" from Margaret A. Wilson, as trustee in liquidation of the C. R. Wilson Estate, Inc. for a consideration of \$19,531.25 from each, or a total consideration for 15/32nds of \$125,000.) After the acquisition by my brother and me of the A. B. Johnson interests in the "Oregon", the ownership of that vessel was in the following persons:— Mary H. Wilson, my mother, owned 10/32nds, F. A. Wilson, my brother, owned 11/32nds and I owned 11/32nds. That ownership continued to January 2, 1929, when the three persons named transferred the 32/32nds shares in the "Oregon" to the petitioner corporation as "a contribution without consideration." Since January 2, 1929, petitioner has [91] continuously been

(Testimony of Winfred T. Wilson.)

the owner of a hundred percent of the "Oregon" and seventy-five percent of the "Idaho".

(From page 82 to page 94 of the record the testimony relates to values and valuation of the Steamships "Idaho" and "Oregon". While the witness gave opinion evidence as to higher values, he conceded that the valuations by the Board of Tax Appeals in its decision in the proceeding of Henry Wilson et al. v. Commissioner, 16 B. T. A. 1208 had not been appealed but accepted. These valuations on the entire vessels, as of the dates stated, were as follows:—

Steamship "Idaho", March, 1917,

(February 6, 1917).....\$395,000.00

Steamship "Oregon", January 2, 1917.....\$385,000.00

These valuations having been adopted in the Memorandum Opinion of the Board in the present proceedings and being accepted by petitioner, recital of the testimony in regard to values are omitted.)

After the "Idaho" and "Oregon" were transferred to petitioner on January 2, 1929, they were operated in the lumber business for about six months when their operations were stopped and they were laid up. The vessels have been laid up, but we have consistently tried to maintain them in a condition where they could be easily and quickly repaired and put into commission, if business opportunities afforded. (On pages 95 to 97 of the record follows testimony as to the probable useful life of the vessels which is omitted because that factor

(Testimony of Winfred T. Wilson.)

is not at issue.) While the vessels have been laid up from [92] year to year we have kept a man on board each of them. He keeps the boat in pretty fair condition and does the painting on it. We usually try to dock the boats and to paint and repair the bottoms once a year to keep the boats in seaworthy condition. (On pages 99 and 100 of the record follows testimony as to requirements and estimates of cost of putting the vessels into commission, which is omitted because immaterial to issues on appeal.)

The two vessels have been constantly retained and maintained by petitioner, even though they have not been operated, because we expected to put them back in commission. It has always been the purpose of the corporation to re-engage in the shipping and lumbering business and the two vessels have always been considered a part of its operating assets.

Petitioner did not declare any dividends during the years 1932, 1933 and 1934 because we did not believe the earnings sufficient, owing to the impaired value of the assets. My brother and I have never abandoned the original idea of operating the company as a logging, milling and shipping company. If we were to enter the logging, lumbering and milling business today, I estimate that it would require fully a million and a half dollars, if not more. When we were operating before the dissolution of our business we had about a million and a half dollars

(Testimony of Winfred T. Wilson.)

in it. Timber lands are not so cheap today and mills and logging equipment are tremendously expensive. We acquired and held the securities which the [93] corporation owns in order to have liquid assets for the time when we would go back into the lumber, logging and milling business. They could quickly be sold and we would have the cash when we wanted to buy anything we wished.

We did not re-enter the business before or during the taxable years involved because losses in the logging business were pretty heavy and in the manufacturing of lumber the saw-mills were taking big losses. It would be unprofitable to go into a business which was losing money.

The witness identified a copy of his income tax return for 1933. I did not return or pay any tax for that year. I have been unable to locate my returns for 1932 and 1934. I paid no tax in 1934 and I paid something like \$150.00 in 1932. I helped my brother in checking his income tax returns for each of the years involved. The witness identified copies of the income tax returns of his brother, Francis A. Wilson, for the years 1932 and 1933 and stated that he had seen the return for 1934. The returns of my brother for the years 1932 and 1933 showed no tax returned for either year and to the best of my knowledge the return for 1934 showed no tax. The failure of the corporation to declare dividends during the years 1932, 1933 and 1934 had very little effect upon the individual income upon

(Testimony of Winfred T. Wilson.)

either my brother's individual income or my individual income. The failure to declare dividends did not result from any discussion between my brother and me of possible taxes falling upon either of us individually. [94]

I desire to correct a statement made in my testimony this morning. The amount of money on deposit with the Anglo California Bank as of December 31, 1931, or January 1, 1931, is not shown by the ledger sheets in my possession. At the time I made the corporation return for 1932 the ledger sheet was available and I am absolutely sure that the amount stated in that income tax return as the balance in that bank was correct. Our books were kept on the accrual basis and the items of interest which had accrued during each of the taxable years 1932 and 1933 were correctly reported for each year.

Cross-Examination

June 6, 1939.

The witness identified the petitioner corporations income tax returns for each of the years 1929, 1930 and 1931 which were respectively marked for purposes of identification only as Respondent's Exhibits A, B, and C.

At all the times since incorporation I have been the secretary and treasurer of the corporation and have kept its books. Referring to Exhibits "A", "B" and "C" marked for identification I would say that I think the balance sheets appearing there-

(Testimony of Winfred T. Wilson.)

in were taken from the books of the corporation.

Referring to the opening balance sheet in Respondent's Exhibit "A" for identification I have no recollection concerning a cash item of \$200,000., nor the \$200,000. notes payable, nor the item under liabilities of common stock \$698,000. shown therein, or recall what they are. The \$466,000. item represents stock in domestic corporations. I don't recall [95] where those stocks came from.

(On interruption by petitioner's counsel, the witness testified in substance as follows:— I do not have the books of account for the years 1929, 1930 and 1931 in my possession here in court. At no time during the preparation of this case was my attention in any way called to the books of account for those years. On the questions being asked I have not seen the record for many years.)

Cross-Examination

Resumed

I presume our books of account would show what those items represented for the year 1929 when the corporation first started business. As I recall, my brother and I paid a thousand dollars into the corporation for stock and I do not recall having paid any other money. I do not recall what the item of \$695,000. on the balance sheet represents; nor the item of cash of \$131,173.43 on the closing balance sheet for December 31, 1929, or that such item was represented by I.O.U.'s; nor where the money came

(Testimony of Winfred T. Wilson.)

from to purchase the \$486,000. worth of stock shown on the balance sheet at December 31, 1929. I have no information with respect to the note payable item at the end of December 31, 1929, of \$200,000. (On being shown the exhibit from which he was being questioned the witness testified.) The \$200,000. note payable item went out of the balance sheet on December 31, 1932, and it was in the opening balance sheet for December 31, 1931. I have forgotten what it represented.

The cash shown in the balance sheet of December 31, [96] 1930, on Respondent's Exhibit "C" for identification was \$56,593.58, but I do not recall whether it was cash or whether we might have had some I.O.U.'s in the cash box. In preparing the returns we took the figures representing cash from the books and the I.O.U.'s, if we had any, in the cash box. We used I.O.U.'s right along and I do not recall whether the \$200,000. in the opening balance sheet was represented by an I.O.U.

As shown by the balance sheet for December 31, 1930, stocks of domestic corporations were purchased increasing the investments up to \$504,595. On the liability side of that balance sheet common stock is shown at \$800,000., an increase from the opening balance sheet which showed \$748,000.

For the year 1931 the balance sheets show an increase from \$56,593.58 to \$1,642,298.24, a large part of which was represented by I.O.U.'s, but how much I cannot recall. I have no record of the I.O.U.'s in

(Testimony of Winfred T. Wilson.)

our books of account and we have no record of petty cash. I have no ledger sheets in which the I.O.U.'s or petty cash appear. I can balance my books without the record of those items. The balance shows \$2,500,000. as common capital stock at December 31, 1931. The books and records of the corporation show the profit and loss from the lumber business for the years 1929 to 1934. I do not recall whether they show a profit or not. "Business was very depressed then; it was awful hard to sell lumber. There was no building going on. It was no criterion of the conditions of the lumber business under normal conditions." [97]

The ledger states the capital account of the corporation as of January 2nd, \$2,500,000. The capital account represents the I.O.U.'s and various investments and the boats. The investment in the boats is \$75,000. for the "Idaho" and \$100,000. for the "Oregon" in the year we formed the corporation. The page of the ledger sheet from which I am reading does not state any specific year but the entry was made in the year which the corporation was formed.

Referring to the entry of capital account, I do not see any stock dividend of \$35,000. there. The item "March 30, Transfer from surplus \$35,000" represents transfer from surplus and I can make no other explanation. The item "January 31st Transfer from treasury stock, \$10,000." represents transfer from the treasury stock and I can make

(Testimony of Winfred T. Wilson.)

no other explanation. The ledger shown me is the ledger for the years 1932, 1933 and 1934. We have another ledger covering the years 1937, 1938 and 1939, but I do not know whether we have a ledger covering the years 1929, 1930 and 1931. (At request of respondent's counsel the ledger identified as covering the years 1932, 1933, and 1934 was ordered marked for identification only as Respondent's Exhibit "D".)

The corporation has a journal which I have here and which covers the years 1932 to 1934. It does not cover the years 1929 to 1932, we kept a journal for that time but I do not know what became of it and doubt whether I would be able to find it. [98]

(Counsel for respondent requested that the books for the years 1929 to 1932 be produced and he advised that in the absence of production he proposed to offer secondary evidence regarding the financial condition of petitioner corporation for that period. Counsel for petitioner explained that he considered that the books of 1929-1932 had nothing to do with the issues and were entirely immaterial, that he had not called upon petitioner to produce accounts for years prior to the years involved. The presiding member of the Board made no order for production but on the day following the books for the years 1929 to 1932 were produced at the hearing.)

The corporation maintains such books and records as it maintains in Los Angeles, in Reno, Nevada, and in San Francisco. The business of the

(Testimony of Winfred T. Wilson.)

corporation is all done in Los Angeles and is conducted in part by myself, my brother and a man in Los Angeles. Our business in Los Angeles is done in the Wilson Building on Wilshire Boulevard and at our lumber yard on Pico Boulevard. We started business in Los Angeles with the corporation when we formed it on December 14, 1928.

We have maintained a bank account in Los Angeles with the Los Angeles branch of the Bank of America. The bank book is in Los Angeles but the bank statements for that account are mailed to us in San Francisco and I have them here.

I kept the books on the accrual basis. Besides the ledger (Respondents Exhibit D for identification) we have various records here, sales books and various records. There [99] was a bank book kept in Los Angeles under my supervision and direction but I do not know whether it was kept under my supervision and direction from 1929 to 1934.

Resumed Hearing

June 7, 1939.

(At this session two witnesses, Albert F. Pillsbury and S. A. Livingston, were called by petitioner to testify as to the value of the Steamship "Idaho" as of February 6, 1917, and the Steamship "Oregon" as of January 10, 1918. As the value of those vessels has been determined by the Board and such valuation is accepted by petitioner, no statement of the testimony of those witnesses is presented.)

(Testimony of Winfred T. Wilson.)

Cross-Examination
of Winfred T. Wilson
Resumed

The stocks of domestic corporations shown in Petitioner's Exhibit 7 were in the possession of the corporation in 1932 and were acquired prior to January 1, 1932, by purchase for cash. The stocks shown on Exhibits 8, 9 and 10 were also purchased for cash. The cash came from the capital of the corporation not out of earnings. In December, 1928, we put in \$1,000. That was the beginning of the corporation. Later we put in \$685,000. contributed in cash and other assets. Later \$50,000. more cash was put in making a balance of \$746,000. as of January, 1930. During January, 1930, \$54,000. was contributed in cash making a balance of \$800,000., January 1, 1931. During 1931 \$1,700,000. in I.O.U.'s plus \$480,312.24 which we had in the San Francisco Bank was contributed. The \$480,000. [100] was contributed by myself and my brother 50-50 during 1931 from the account in the San Francisco Bank belonging to myself and my brother.

After the \$480,000. was contributed to capital in 1931, \$35,000. was transferred from the book surplus. This amount came from profit and loss into the surplus account and as profit and loss it represented the total operations of the business.

I cannot tell you the amount of interest the corporation received from bonds during the year 1932. We have a record of the total interest received each

(Testimony of Winfred T. Wilson.)

month but it is not itemized. From accounts receivable during the year 1932, my notations show that we got \$1,726.41 from Woodhead Lumber Company; \$1,324. from the San Francisco Bank in December and \$1,312.50 in April; \$8.40 and \$10.59 from Hutton in January and \$7.34 from Hutton in May. The principal source of interest was the Woodhead Lumber Company and the San Francisco Bank.

The interest account for 1933 in our general ledger does not make a break-down of the total interest received for the various items, bonds, accounts receivable and bank accounts. We kept an account of the total interest received each month without segregation. Our bank books would show the interest received from banks. We get the information which we enter in our ledger account from payments made each month—we get a payment from the Woodhead Lumber Company and we get the bank statements of the interest allowed from the bank. I have no [101] itemization here to show whether the Woodhead Lumber Company paid interest in 1935. For the year 1934 and the other years here involved there is some itemization.

I examined the books of the Woodhead Lumber Company. I am not an officer or stockholder of that corporation and have no interest of any kind in it.

I was permitted to examine the corporation's books because it owed us a great deal of money and

(Testimony of Winfred T. Wilson.)

Mr. Woodhead was a friend of mine. We wanted to know if we were going to get our money. It looked pretty bad. So Mr. Woodhead showed us everything he had. I believe I made the examination in 1934.

The Woodhead Lumber Company of Nevada bought the inventory and physical assets of the Woodhead Lumber Company of California in the latter part of 1932 and in consideration gave its note for \$25,000. and \$37,000. worth of its capital stock. The Woodhead Lumber Company of California was indebted to the petitioner but the Nevada corporation was not, except that we started to sell lumber to it. The Woodhead Lumber Company of California turned over to us as security the note for \$25,000. secured by the \$37,000. par value stock of the Nevada corporation, but the stock did not have any \$37,000. of value. We still sell lumber to the new company.

Cross examination was interrupted and S. A. Livingston was sworn and testified as to valuation of the Steamships "Idaho" and "Oregon". As this testimony is not material to any issue on appeal it is omitted. [102]

Cross-Examination
of W. T. Wilson resumed.

(Here follows testimony on pages 189 to 192 of the record concerning the account of the petitioner corporation with respect to the Steamship "Svea".

(Testimony of Winfred T. Wilson.)

As no issue concerning this account is involved in the appeal, statement of the evidence is omitted.)

Testifying from a document not in evidence but furnished by respondent's counsel, I paid personal income tax deficiency in the amount of \$506.09 for 1933 plus a penalty of \$25.30 though I reported a net loss for that year. I do not remember whether I paid any personal income tax for the years 1929, 1930 and 1931.

(Testimony concerning the witnesses experience and knowledge regarding sales of vessels or interests in vessels and construction and operation of vessels follows on pages 195 to 204 of the reporter's record. As this cross-examination relates to the witnesses qualification to testify to the value and life of vessels and as no such issue is on appeal, statement of such evidence is omitted.)

Redirect Examination of Winfred T. Wilson

With regard to the amounts of capital or contributions to the petitioner to which I testified on cross-examination, the usual form of the contributions was in the form of I. O. U.'s. Sometimes we would pay a little on them and sometimes we wouldn't and they are still in the cash box.

I kept the books of account of the corporation during the years 1929 to 1931 inclusive. Since my testimony given on cross examination yesterday I have found additional books, documents, records

(Testimony of Winfred T. Wilson.)

and papers relating to the financial history of the petitioner during the years 1929 to 1931. (Here the witness identified the ledger for the years 1929, 1930 and 1931.) The ledger is not all complete. The main accounts are here, the profit and loss accounts. The accounts receivable is not complete as to some of the smaller accounts.

(Here follows on pages 206 to 208 of the record testimony relating to the deduction sought in relation to the Steamship "Svea". As this point is not at issue on appeal, no statement of such evidence is given.)

I am not a Certified Public Accountant, have never acted as a bookkeeper other than for petitioner, and have never had any training as a bookkeeper. Whenever I have had any disputes with respect to income tax liability I have hired Certified Public Accountants to put in the facts because I am not able to do it myself.

Explaining my testimony on cross-examination yesterday regarding a \$10,000. reduction on the books with respect to treasury stock, we put in that much cash to take it up. No stocks or bonds were transferred to the corporation by my brother and me.

I don't understand the technical meaning of the term "surplus" as compared with the term "paid in surplus" very well, I am not an expert on book-keeping. [104]

With respect to the Woodhead Company account concerning which I gave testimony this afternoon,

(Testimony of Winfred T. Wilson.)

we never recovered the \$5,000. The account was a large account and we recovered only a portion thereof through life insurance which Mr. Woodhead assigned to us to save us from loss of all that money.

(Here follows on pages 210 to 213 of the record testimony relating to value and condition of the Steamships "Idaho" and "Oregon", which, because it does not relate to any issue on appeal, is not reduced to statement.)

Recross-Examination
of Winfred T. Wilson

On direct examination I testified that a receiver had been appointed for the Kentucky Fuel and Gas Corporation, I think it went into receivership in 1931, but I am not sure. In my investigation I looked up quotations on the 6½ bonds of the corporation. We claimed partial deduction on those bonds for 1934. I looked up the market quotations of the bonds in 1932 but do not recall the sale or bid and asked prices with respect to them. I think the charge-off was a general one against the bonds we owned. I have the book of account where the charge-off of Kentucky Fuel and Gas bonds was made. The book shows that we acquired the bonds December 1st but does not give the year. I do not know from whom we acquired the bonds of a face value of \$15,000. in 1932.

THOMAS MURPHY

was called as a witness by and on behalf of the petitioner and [105] having been first duly sworn testified on June 7, 1939, in substance as follows:

Direct Examination

I am a Certified Public Accountant employed by Barrow, Wade, Guthrie & Co., a firm of national and international accountants, as a senior accountant. The nature of my work as a senior accountant covers the general field of auditing, cost accounting and Federal and State income taxation. I am admitted to practice before the Treasury Department and the Board of Tax Appeals.

In my capacity as an employee of Barrow, Wade, Guthrie & Co. I have made an examination of the books of petitioner. My firm was employed to make that examination by Judge Graupner, counsel for petitioner, subject to the approval of Francis A. Wilson, an officer of the corporation, in August of 1938. My instructions were given by Judge Graupner. He stated that he wished to have an impartial examination made of the books and records and all other papers which would be made subject to my inspection and from those records to prepare balance sheets for the years ended December 31, 1932, and annually thereafter to include December 31, 1934, to reflect in the amended statements all adjustments of errors which I located in the course of my examination, including particularly those errors of principle which I discovered. Also, I was to make a survey of income and earned surplus accounts and

(Testimony of Thomas Murphy.)

to make such adjustments in those accounts as I found necessary. [106]

I was advised that the purpose of the examination and my report was for use in relation to petitioner's income tax disputes for the years 1932 to 1934 inclusive. Also, I was told it was desired to have a report which would provide the basis for more complete accounting for the years thereafter. This report was completed by my firm and submitted to the client. When it became apparent that this case was to go to trial I made additional examinations of several matters and prepared additional schedules and made slight adjustments in two schedules so as to make the facts more informative.

In the preparation of the report the scope of my examination did not go so far as to be a detailed one, but I was to make an analysis of all of the balance sheet accounts and to make due adjustments for any errors that I located in the course of my examination. I was also to make a survey of all of the income accounts for the years 1929 to 1934 inclusive so as to properly state the earned surplus account at each of the balance sheet dates included in the period of examination.

The books that were made available to me were the general ledger, journal and the lumber sales sheets for the years 1932 to 1934 inclusive. Also, I saw the minute book and the capital stock record book, but I found no other evidence of any other records or books of account than those which I have detailed. In my opinion, those books were kept on

(Testimony of Thomas Murphy.)

the accrual basis with the possible exception in respect of dividends on the stocks of domestic corporations. This diversion of [107] treatment of dividends is somewhat common and is apt to occur in accounting.

As to items of income and deduction, the books and returns were in accord each with the other. I attempted but was unable to take a trial balance from the general ledger as of January 1, 1932, December 31, 1932, December 31, 1933, and December 31, 1934, because the general ledger accounts, as submitted to me, lacked certain other accounts necessary to establish a complete balance of the records. From information furnished me by Francis A. Wilson, one of the officers of the corporation, I was able to complete a balance of the books for all four dates named. I went further than that: I compared the completed trial balance, with the reconciliation items, with the returns filed for the three years and found that in each case a combination of the individual items found in the general ledger would tie in with the classification appearing in the balance sheets in the returns. (The witness then identified three sheets of typewritten paper as being general ledger trial balances for the three years "before reconciliation.") The information from these sheets was taken from the books of the company. No year dates were available but the information was supplied by officers of the corporation. Because I ultimately was able to reconcile the figures through the

(Testimony of Thomas Murphy.)

additional information supplied and to tie them into the Federal tax returns for those years, it is my opinion that these trial balances are correct, even though there may be [108] deficient information contained in the books. The three sheets of paper fastened together were offered in evidence for the purpose of showing what the books of petitioner show for the periods indicated and were submitted and marked Petitioner's Exhibit No. 18.

I made certain reconciliations with respect to the general ledger trial balance for the purpose of indicating specifically the particular items which were omitted. There was no ledger sheet in the books of the taxpayer to evidence the account of the Anglo-California National Bank which showed a balance of \$4,694.28 on January 1, 1932. I verified that item by examining the cancelled bank book that was issued by the bank to evidence that account. I also have seen the account of the Atlantic Lumber Company showing the balance due the taxpayer on January 1, 1932, in the sum of \$45.00. That account will be found in the ledger that was presented as evidence this morning by Mr. Wilson. Other than that I have not seen any of the accounts which I have attempted to reconcile as shown by the schedule of reconciliations which I prepared, and hold in my hand and I have never seen ledger sheets to substantiate them, but have been given explanations by officers of the company as to what they consisted. When I say "other than that I have not seen the

(Testimony of Thomas Murphy.)

accounts", I refer to the cash item which is shown for the first three years in excess of one million dollars and at December 31, 1934, of 898,000 odd dollars. It was explained to me that those items were represented by I. O. U.'s which were placed in the cash drawer of Wilson Brothers [109] & Company and that it was necessary to take into account those I. O. U.'s in effecting a balance of the general ledger. I had not seen any of those I. O. U.'s at the time of preparing the statement of reconciliation. I have not seen any of the I. O. U.'s which would induce the particular amounts but I have seen one that is currently being carried in the cash box of the taxpayer. It is for \$843,438.54, consisting of two equal parts, one of which is purportedly due by Francis A. Wilson and the remainder owing by Winfred T. Wilson. (Petitioner offered in evidence the schedule or statement of reconciliation concerning which the witness testified as Petitioner's Exhibit No. 19 and the objection to admission thereof by Respondent's counsel was sustained by the presiding Member.)

The attention of the witness was called to Petitioner's Exhibit No. 6, entitled "Wilson Bros. and Co. Cash in banks," showing total cash in banks as follows:

January 1, 1932	December 31,		
	1932	1933	1934
\$408,999.65	\$96,638.23	\$9,186.43	\$73,707.36

(Testimony of Thomas Murphy.)

I prepared the original of this exhibit. I determined the cash in banks as of the various dates shown from examining the ledger sheets of the company and comparing them with the ledger sheets in possession of the listed banks, bank statements or bank pass books. There was no additional amount of cash shown by the books of the company.

The attention of the witness was called to Petitioner's Exhibit No. 3. (Corporation Income Tax Return of petitioner for [110] calendar year 1932.) I attempted to reconcile the cash shown on the return as \$1,642,298.24 as of January 1, 1932, with the cash for that date shown on Exhibit 6 as \$408,999.65, but I could locate no additional cash either in the form of cash, currency or bank deposits. The attention of the witness was called to Petitioner's Exhibit No. 4 (Corporation Income Tax Return of petitioner for calendar year 1933). The exhibit shows cash at the beginning of the taxable year as \$1,106,377.07 and I could not reconcile the difference between that amount and the \$96,638.23 shown on Exhibit 6 for the same date. I could locate no further deposits or other forms of cash. At the end of the year 1933 cash in Petitioner's Exhibit No. 4 is shown to be \$1,022,123.45. I could not reconcile this figure with the \$9,186.43 shown in Exhibit No. 6 for the same date for the reasons given before. In Petitioner's Exhibit No. 5 (Corporation Income Tax Return of Petitioner for calendar year 1934) cash at the end of the year 1934 is shown as \$972,147.49.

(Testimony of Thomas Murphy.)

I could not reconcile that figure with the \$73,707.36 shown in Exhibit No. 6 for the same reasons.

I have examined the books of petitioner but did not encounter any item or sheet relating to \$200,000. of notes payable.

The witness identified a paper as being a statement of accounts receivable of the petitioner as of January 1, 1932. The items on that paper, with the exception of the accounts of Fisher Company \$35. and E. F. Hutton & Company \$5,173.99 were [111] taken from the ledger of the company which are here in the court room. With the exception of the items relating to Fisher Company and E. F. Hutton & Company the statement was admitted in evidence and marked Petitioner's Exhibit No. 19. (As admitted, Exhibit No. 19 shows accounts receivable as of January 1, 1932, to be \$62,107.06.)

The witness identified a paper as being a statement of the accounts receivable of the petitioner as at December 31, 1932. The statement shows all the accounts receivable of petitioner that are set forth in the books of account. Also, it shows an account in the name of J. C. Smith Lumber Company in the sum of \$87.89 which is not disclosed in the ledger sheets. With the exception of the item \$87.89 under the name J. C. Smith Lumber Company, the statement was admitted in evidence and marked Petitioner's Exhibit No. 20. (As admitted Exhibit No. 20 shows accounts receivable as of December 31, 1932, to be \$72,574.58.)

(Testimony of Thomas Murphy.)

The witness identified a paper as being a list of the accounts receivable of petitioner as at December 31, 1933. The list was compiled from the books of account of the company present in the court room—with the exception of the item Advance Lumber Company \$100. With the exception of the item of \$100. as to Advance Lumber Company, the list was admitted in evidence and marked as Petitioner's Exhibit No. 21. (As admitted Exhibit No. 21 shows accounts receivable as of December 31, 1933, to be \$94,824.91.) [112]

The witness identified a paper as the schedule of accounts receivable of petitioner as of December 31, 1934. That schedule is complete from the books of account of the company without exception. I discovered accounts receivable with respect to the shareholders and officers of petitioner but did not list them on this schedule. I classified them separately on the balance sheet which I prepared for the information they may contain in this proceeding. This schedule, together with the three exhibits immediately preceding, indicate only those accounts receivable which had to do with the company's trade in business, namely: the sale of lumber and the accounts representing advancements in respect to the Steamship "Svea". The schedule was admitted in evidence and marked Petitioner's Exhibit No. 22. (Exhibit No. 22 shows total accounts receivable as of December 31, 1934, to be \$103,002.60).

The witness identified a paper as being an analysis

(Testimony of Thomas Murphy.)

of the ledger sheet appearing in Petitioner's books of account present in the courtroom. The analysis concerns the account of petitioner carried with F. A. Wilson for the period April 26, 1933, to January 2, 1935, inclusive. The dates and amounts are shown on the ledger sheet of that account but the explanations in the schedule are taken from journal entries and other ledger entries which show that Mr. Wilson, as a stock broker, bought and sold securities for which he was accountable to petitioner. The schedule was admitted in evidence and [113] marked Petitioner's Exhibit No. 23.

In my opinion as an expert accountant petitioner, during the years 1933 and 1934, kept its accounts on the direct write-off method with respect to bad debts and the books so reflect. The account entitled "Reserve for Bad Debts" which appears in the books of the corporation is not unusual. Corporations frequently set up a "Reserve for Bad Debts" in which there is provision made for debts known or believed to be bad, and such reserve is a balance sheet item and operates to reduce the carrying value of the asset related to it. The reserve for bad debts expression may be used in two entirely different senses, and it is my opinion that in this case the term is used as a valuation balance sheet account and does not show by which means it elected to take off deductions for bad debts from a tax point of view. It is my opinion that the petitioner is on a direct write-off basis under the Revenue Act, irrespective

(Testimony of Thomas Murphy.)

of the fact that for accounting purposes it carried a reserve for bad debts.

(Here follows testimony on pages 265 to 269 of the reporter's record and the admission of Petitioner's Exhibits Nos. 24 and 25 relating to maintenance expenses of the Steamships "Idaho" and "Oregon" and the accounts receivable of the Steamship "Svea". As these items are not at issue on appeal no statement of the testimony in relation thereto is included. Following such testimony on pages 269 and 270 of the record the witness further testified to his examination [114] relating to the bank interest accounts of petitioner. As this item is not at issue on appeal the testimony relating thereto is omitted.)

In connection with the reserve for bad debts, with exception of the provision for uncollectibility of the Steamship "Svea" account, immediately, or at least as of the same date, which was December 31 of the years involved, the entry setting up the provision for bad debts was followed immediately by a charge back to reserve for bad debts account and a credit to the related assets account. That applies with respect to the Kentucky Gas bonds and the Woodhead Lumber Company.

For the year 1933 there were nine specific accounts receivable which were credited, thereby eliminating the accounts as assets from the books of the corporation, but leaving the Steamship "Svea" provision in the reserve for bad debts. In the year 1934

(Testimony of Thomas Murphy.)

the two credits to asset accounts with corresponding charges to the reserve for bad debts were with respect to the Kentucky Fuel & Gas Corporation bonds and the Woodhead Lumber Company in respective amounts of \$5,500. and \$5,000.

(Here follows testimony on pages 272 and 273 of the reporter's record relating to interest on bank deposits which, because not material to issue on appeal, is omitted.)

Referring to Petitioner's Exhibit No. 7 (Stocks of Domestic Corporations as of January 1, 1932.) I prepared the schedule. The figures under the heading "Number of Shares" [115] were taken from the ledger sheets carried individually for each investment of petitioner. The information as to the names of the corporations were taken from the same source and also the figures shown under "Cost". The figures for "Approximate Market Value" were taken from bank and quotation records. The figure I used in each case was the exact amount of the last sale and, if there did not happen to be a last sale, I took the bid price. However, there were two exceptions. With respect to the Anglo National Corporation I went to the office of the San Francisco Stock Exchange where the stock was listed and secured from its official records the price at which the last sale occurred. In connection with the Weeden & Co. stock I communicated with an officer of that corporation and was given orally a price at which sales had been negotiated through that company for shares of its

(Testimony of Thomas Murphy.)

own stock about the time of the balance sheet date. The same explanation applies with equal force to Exhibits 8, 9 and 10. (Petitioner's Exhibits Nos. 8, 9 and 10 are schedules of "Stock of Domestic Corporations" as of December 31, 1932, 1933 and 1934 respectively.) There is an exception to Exhibit No. 10 wherein the last item on the schedule is labeled "Unidentified difference" and opposite that item under "Approximate Market Value" there is the word "none", indicating no value whatever. Under the word "Cost" are the red ink figures of \$212.50 indicating a deduction from the other assets to come to a net balance which would be \$212.50 less than the aggregate cost as shown by the [116] Exhibit. There is simply no way of explaining this difference. Petitioner's ledger accounts are thus \$212.50 greater than the amount appearing in the Federal income tax return.

There is another exception involving \$250,000. The petitioner's book shows two ledger accounts entitled "Treasury Stock" and that \$250,000. did not represent actual value in the form of treasury stock. As shown by the capital stock records, there never had been any capital stock issued in excess of \$1,000. par value. I could find no records to indicate any repurchase or other acquisition of any stock of the corporation, therefore, I eliminated the \$250,000. as being of no value whatever.

Referring to Petitioner's Exhibit No. 11 (schedule of "Bonds of Domestic Corporations"), I prepared this statement. The cost figures for the

(Testimony of Thomas Murphy.)

four dates (January 1, 1932, and December 31 for each of the years 1932, 1933 and 1934) are taken from the ledger accounts and are in agreement. The cost figures for Kentucky Fuel Gas Corp. bonds as shown by Exhibit 11 are as follows:

\$18,000. 1st lien s. f. 6½% A bonds due 1942, at January 1, 1932.....	\$9,000.00
15,000. 1st lien s. f. 6½% A bonds due 1942, at December 31st, 1932.....	450.00
10,000. 1st lien s. f. 6½% A bonds due 1942, at December 31, 1933.....	20.00
<hr/>	
\$43,000. total par value of said bonds had a cost on December 31, 1933, of.....	\$9,470.00

I made an investigation upon which I could base an opinion as to whether or not there was any loss in value of the bonds of the Kentucky Fuel & Gas Corporation. I have here [117] information which I acquired with respect to those bonds. In the first place, due to the rapid shrinkage of the market value of those bonds, it was evident that a substantial loss of value had occurred from one of two reasons: First, a mere fluctuation in market conditions which might be due to extrinsic factors and also it might represent a final and permanent loss of value within the bond itself. That would be particularly true because these bonds were a senior issue; they had sinking fund provision; they carried a fairly high coupon and yet sold as low as \$2. per hundred dollar bonds therefore, I considered market value would have a very considerable bearing on evidence of worth or lack of it.

(Testimony of Thomas Murphy.)

The source of my information as to these market values is the Bank and Quotation Record and as to the first sinking fund 6½ bonds of 1942, I will give the bid and ask prices in that order and each quotation will be on the basis of a \$100. bond:

January 1, 1930	\$74.00 and \$79.00
December 31, 1930	\$35.00 and \$45.00
December 31, 1931	\$ 5.00 and \$ 7.00
December 31, 1932	\$ 1.25 and \$ 4.00
December 31, 1933	\$ 2.00 and \$ 4.00
December 31, 1934	\$ 4.50 and \$ 6.00

For the years 1935 and thereafter for the dates given I will state only the bid price: December 31, 1935, \$8.00; December 31, 1936, \$18.50; November 30, 1937, \$8.00.

Assuming for the moment that the deduction of \$5,500. claimed with respect to Kentucky Fuel & Gas Corporation bonds might not be allowed for some technical reason, it is my opinion that from an accounting point of view as distinguished from a [118] tax point of view there should be provision to reduce the book value and the carrying value of these bonds to at least as low a figure as appears in the accounts of this corporation. I think that the provision of \$5,500. is certainly not greater than would be made under good accounting practice in a financial statement of the company.

(Testimony of Thomas Murphy.)

Cross-Examination
of Thomas Murphy

With respect to Kentucky Fuel & Gas Corporation debentures 6½s of 1938 the bid and ask prices from 1930 to 1934 were respectively as follows:

January 1, 1930	\$73.00 and \$77.00
December 31, 1930	\$45.00 and \$55.00
December 31, 1931	\$ 1.25 and \$ 1.50
December 31, 1932	none and \$ 2.00
December 31, 1933	none and \$ 2.00
December 31, 1934	none and \$ 2.00

Whereupon, the petitioner rested and respondent offered documents marked for identification as Respondent's Exhibits "A", "B" and "C" (Petitioner's income tax return for the years 1929, 1930 and 1931 respectively) in evidence. Over objection by petitioner and on exception the documents were admitted in evidence as Respondent's Exhibits "A", "B" and "C".

The foregoing evidence together with the Stipulation of Facts filed with the United States Board of Tax Appeals on June 6, 1939, and the Exhibits referred to in the foregoing statement constitute all of the material evidence adduced at the hearing before said Board and relating to the issue involved [119] in the petition for review of the decision of said Board.

The deficiency notices attached to the petitions on file in the above-entitled and numbered proceedings and designated in the foregoing statement as Petitioner's Exhibits numbered 1 and 2 are to be considered as before the court without additional transcript thereof for the record on appeal.

There are to be attached hereto and made a part hereof on transmission of the record from the Clerk of the United States Board of Tax Appeals to the Clerk of the United States Circuit Court of Appeals, Ninth Circuit, the following Exhibits offered by the parties to the proceedings and admitted in evidence, viz:

**Petitioner's
Exhibit**

- 3—Petitioner's income tax return for 1932
- 4—Petitioner's income tax return for 1933
- 5—Petitioner's income tax return for 1934
- 6—Statement of Petitioner's cash in banks
- 7—Statement of Petitioner's stock ownership 1/1/32
- 8—Statement of Petitioner's stock ownership 12/31/32
- 9—Statement of Petitioner's stock ownership 12/31/33
- 10—Statement of Petitioner's stock ownership 12/31/33
- 11—Statement of Petitioner's bond ownership
- 18—(3 Sheets) Petitioner's General Ledger Trial Balances (after closing) 1932-1934
- 19—Petitioner's accounts receivable 1/1/32
- 20—Petitioner's accounts receivable 12/31/32
- 21—Petitioner's accounts receivable 12/31/33
- 22—Petitioner's accounts receivable 12/31/34
- 23—Analysis petitioner's accounts receivable from F. A. Wilson

[120]

**Respondent's
Exhibit**

- A—Petitioner's income tax return for 1929
- B—Petitioner's income tax return for 1930
- C—Petitioner's income tax return for 1931

The foregoing Revised Statement of the Evidence is approved by the undersigned as attorneys for the petitioner and respondent on review.

ADOLPHUS E. GRAUPNER

LOUIS JANIN

Attorneys for Petitioner
on Review

J. P. WENCHEL

Counsel for Respondent
on Review. [121]

Computation Form 1190

0-12

Page 1 of Return

FORM 1190
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Auditor's Stamp)

CORPORATION INCOME TAX RETURN
For Calendar Year 1932

File This Return with the Collector of Internal Revenue for Year Ended on or Before March 15, 1933

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

WILSON BROS. & CO.

(Name)

1312 Russ Building,

(Street and number)

San Francisco, Calif.

(Post office and State)

It is Essential Except Where Otherwise Provided in the Instructions, That This Form be Completely Filled Out irrespective of any Statement, Schedule, or Report Submitted Herewith

Date of Incorporation December 4, 1928

Under the Laws of what State or Country Nevada

File No. 781
Serial Number 856828

1-Call.

(Auditor's Stamp)



E ✓
14.m.m.
7/27 3

The Corporation's Books are in the Care of Wilson Bros. & Co. Located at 1312 Russ Building
Kind of Business Lumber & Steamship in This a Consolidated Return of Two or More Corporations No

ATTACH REMITTANCE HERE

GROSS INCOME

1. Gross Sales (where inventories are an income-determining factor), \$	Less Returns and Allowances, \$	Net Sales, \$	25,725.00
2. Less Cost of Goods Sold:			
(a) Inventory at beginning of year		20,942.18	
(b) Material or merchandise bought for manufacture or sale		12,415.55	
(c) Miscellaneous costs (From Schedule A, Column 2): (1) Salaries and wages, \$	(2) Other costs, \$		
(d) Total of lines (a), (b), and (c)		33,357.73	
(e) Less inventory at end of year		35,355.79	
3. Gross Profit from Sales (Item 1 minus Item 2)	(LOSS)		4,522.97
4. Gross Receipts (where inventories are not an income-determining factor)			
5. Less cost of operations (From Schedule A, Column 2): (a) Salaries and wages, \$	(b) Other costs, \$		
6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5)			
7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.			15,941.89
8. Rents			790
9. Royalties			
10. Profit from Sale of Real Estate, Stocks, Bonds, and other Capital Assets (From Schedule B)			5,192.70
11. Dividends on: (a) Stock of Domestic Corporations subject to taxation under Title I of Revenue Act of 1928			
(b) Stock of Domestic Corporations not subject to taxation under Title I of Revenue Act of 1928			18,250
(c) Stock of Foreign Corporations			
12. Other Income (State nature of income): (a) _____ (b) _____			
13. TOTAL INCOME BY ITEMS 3, AND 6 TO 12, EXCLUDING DEDUCTIONS			567.17
14. Compensation of Officers (From Schedule C)			None
15. Rent on Business Property			1,415.80
16. Repairs (From Schedule D); Salaries and Wages, \$	Other Costs, \$		
17. Interest			
18. Taxes (From Schedule E)			752.50
19. Losses (From Schedule F)			4,547.00
20. Bad Debts (From Schedule G)			
21. Dividends (From Schedule H)			18,250
22. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I)			11,100
23. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit schedule, see Instruction 23)			
24. Other Deductions Not Reported Above (Receipts below, or as reported above): (a) Salaries and wages. (Not included in Item 3, 14, or 18 above)			5,780
(b) General Expense			2,405.88
(c) _____			
(d) _____			
25. TOTAL DEDUCTIONS IN ITEMS 14 TO 24			44,886.46
26. NET INCOME (Item 13 minus Item 25)		LOSS	11,740.92
27. Less: Net Loss for 1931 (Submit schedule)			
28. NET INCOME FOR TAX COMPUTATION (Item 26 minus Item 27)			

COMPUTATION OF TAX

29. Net Income (Item 28 above)			
30. Income Tax (15% of Item 29) (or 14% of Item 29, if this is a consolidated return)			
31. Less: Income Tax Paid at Source. (This credit can only be allowed to a nonresident foreign corporation)			
32. Income Tax Paid to a Foreign Country or United States possession by a domestic corporation (See Instruction 30)			
33. Balance of Tax (Item 29 minus Items 31 and 32)			

An amended return must be marked "Amended" at top of return.

Cheques and drafts will be accepted only if payable to you.

56
6
69

U.S. BOARD OF TAX APPEALS
DIV. 2 2337
JUN - 6 1933
PETITIONER'S EXHIBIT 3
RESPONDENT

0-12

SCHEDULE E—BALANCE SHEETS (See Instructions 66)

Item	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
ASSETS				
1. Cash		\$ 1 648 296 24		\$ 1 106 377 07
2. Notes receivable				14 000
3. Accounts receivable	\$ 102 166 33		\$ 211 628 98	
Less reserve for bad debts		102 166 33		211 628 98
4. Inventories:				
Raw materials				
Work-in-process	\$ 20 942 18			
Finished goods				
Supplies				
		20 942 18		
5. Investments (nonexempt):				
Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia				
Securities issued under the Federal Farm Loan Act, or under such Act as amended				
Obligations of the United States or its possessions				
6. Other investments:				
Stocks of domestic corporations	\$ 786 670		\$ 1 000 943 50	
Bonds of domestic corporations	12 974		13 425	
Stocks and bonds of foreign corporations				
All other investments or interests	131 250	910 895	122 500	1 136 868 50
7. Deferred charges:				
Prepaid insurance				
Prepaid taxes				
All other				
8. Capital assets:				
Land	\$ 30 000			30 000
Buildings	20 000		20 000	
Machinery and equipment	7 750 50		7 750 50	
Furniture and fixtures	5 000		5 000	
Delivery equipment				
	32 750 50		32 750 50	
Less reserves for depreciation (except on land)	6 850 50	25 900	9 250 50	23 500 00
9. Patents				
10. Good will				
11. Other assets (describe fully):				
12. TOTAL ASSETS		\$ 2 732 201 75		\$ 2 522 374 43
LIABILITIES				
13. Notes payable (less than one year)		\$ 200 000		
14. Accounts payable		19 409 11		3 064 68
15. Bonds and notes (not secured by mortgage)				
16. Mortgages (including bonds and notes so secured)				
17. Accrued expenses:				
Interest				
Taxes				
All other				
18. Other liabilities (describe fully):				
19. Capital stock:				
Preferred stock (less stock in treasury)				
Common stock (less stock in treasury)		2 500 000		2 500 000
20. Surplus				
21. Undivided profits		12 792 64		19 302 75
22. TOTAL LIABILITIES		\$ 2 732 201 75		\$ 2 522 374 43

Remarks: Declared 7.2.11 250,000.00 represented 20 shares

6-13

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

1. Net income from Item 28, page 1 of the return. LOSS	11 740 81	11. Profitable deductions:	
2. Miscellaneous income:		(a) Dividends, annuities, and distributions:	
(a) Interest on obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia.		(1) Income and profits taxes paid to the United States, and such taxes paid to the possession or foreign countries if claimed as a credit in Item 28, page 1 of the return.	
(b) Interest on securities issued under the Federal Farm Loan Act, or under such Act as amended.		(2) Federal taxes paid on income exempt from tax.	
(c) Interest on obligations of the United States or its possessions.		(3) Special improvement taxes tending to increase the value of the property exempt.	
(d) Dividends distributable under Section 20 (j) of the Revenue Act of 1936.	18 258	(4) Premiums and interest, additions, or investments limited in expense on the basis.	
(e) Proceeds of life insurance policies paid upon the death of the insured.		(5) Depreciation and repairs.	
(f) Other items of miscellaneous income (to be detailed):		(6) Income tax credits paid on the life of any officer or employee where the corporation is directly or indirectly a beneficiary.	
(1) _____		(7) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation.	
(2) _____		(8) Additions to reserve for bad debts which are not included in Item 28 (page 1 of return).	
(3) _____		(9) Additions to reserve for contingencies, etc. (to be detailed):	
3. Charges against reserve for bad debts, if Item 28, page 1 of return, is not an addition to a reserve.		(1) _____	
4. Charges against reserve for contingencies, etc. (to be detailed):		(2) _____	
(a) _____		(3) _____	
(b) _____		(4) Other unallowable deductions (to be detailed):	
(c) _____		(1) _____	
5. Total of Lines 1 to 4, inclusive.	6 517 13	(2) _____	
6. Total from Line 14.		(3) _____	
7. Net profit for year, as shown by books, before any adjustments are made therein (Line 1 minus Line 5).		(4) Total of Line 14.	
8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year.	12 792 64	15. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property):	
9. Other credits to surplus (to be detailed):		(a) Date paid _____ Character _____	
(a) _____		(b) Date paid _____ Character _____	
(b) _____		(c) Date paid _____ Character _____	
(c) _____		(d) Date paid _____ Character _____	
10. Total of Lines 7 to 9, inclusive.		16. Other debits to surplus (to be detailed):	
11. Total from Line 17.		(a) _____	
12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11).	19 309 78	(b) _____	
		(c) _____	
		(d) Total of Lines 15 and 16.	

NET INCOME OR DEFICIT REPORTED IN RETURN FOR 1931 BEFORE DEDUCTING NET LOSS FOR PRIOR YEAR

- Enter amount of net income or deficit for 1931 before deducting net loss for 1929-1930. \$ _____
- Enter amount deducted in return for 1931 as net loss for 1929-1930. \$ _____

KIND OF BUSINESS

3. State the main business engaged in, also whether acting as principal or as agent on commission; state if inactive or in liquidation:

Check the proper block below to indicate the general industrial division in which the corporation's main income-producing business falls:

- Agriculture and related industries, including fishing, forestry, ice harvesting, etc.; also leasing of such property.
- Mining and quarrying, including gas and oil wells; also leasing of such property.

Manufacturing—

- Food products, beverages, and tobacco.
- Textiles and textile products.
- Leather and leather products.
- Rubber and related products.
- Lumber and wood products, including floor furniture.
- Paper, pulp and products.
- Printing, publishing, and allied businesses.
- Chemicals and allied products, including petroleum products.
- Stone, clay, and glass products.
- Metal and metal products, including precious metals and products.
- Other manufacturing.

Construction—excavations, buildings, bridges, railroads, ships, etc.; also equipping and installing operating systems, devices, or machinery without their manufacture.

Transportation—rail, water, aerial, motor, etc.; also leasing of such facilities.

Public utilities—electric light or power, gas (artificial or natural), pipe lines, telephones, telegraph or radio, waterworks, heating, toll bridges, etc.; also leasing of such utilities.

Storage—cold storage, grain elevators, warehouses, auto deposit vaults, etc.; also leasing of such property.

Trading—wholesale, retail, or commission.

Service—professional, business, amusement, etc.; domestic, including hotels, restaurants, laundries, etc.

Finance—banks and other financial organizations, insurance, real estate; also brokers and agents.

AFFILIATIONS WITH OTHER CORPORATIONS
SEE INSTRUCTION 4

- Is this a consolidated return of two or more corporations?
If so, prepare from the Collector of Internal Revenue for your district Form 941, Affiliations Schedule, which shall be filed in, over to, and filed on a part of this return. See Section 141 of the Revenue Act of 1933 and Instruction 6B.
- Was the income of this corporation included in a consolidated return for the prior year?
If so, give name of corporation which filed the consolidated return.

PREDECESSOR BUSINESS

- Did the corporation file a return under the same name for the preceding taxable year? **YES** Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? If answer is "yes," give name and address of each predecessor business, and the date of the change in entity.

Upon such change were any asset values increased or decreased?
If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

BASES OF RETURN

- Is this return made on the basis of actual receipts and disbursements? **YES**
If not, describe fully what other basis or method was used in computing net income.

VALUATION OF INVESTMENTS

- State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock.

LIST OF ATTACHED SCHEDULES

- Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

Schedule A

1. Cost of sales (where inventories are an income-determining factor)

[Not filled in]

2. Cost of operations (where inventories are not an income-determining factor)

[Not filled in]

Schedule B

Profit From Sale of Real Estate, Stocks, Bonds, Etc.

[Not filled in]

Schedule C—Compensation of Officers

[Not filled in]

Schedule D—Cost of Repairs

[Not filled in]

Schedule E—Taxes Paid

[Not filled in]

Schedule F—Explanation of Losses by Fire, Storm, Etc.

[Not filled in]

Schedule G—Bad Debts

[Not filled in]

Schedule H—Dividends Deductible

[Not filled in]

Schedule I—Explanation of Deduction for Depreciation

1. Kind of Property	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquisition	5. Cost	6. March 1, 1913, Value if Acquired Prior to That Date	7. Depreciation Allowed (or Allowable) in Prior Years	8. Depreciation Allowable This Year
Wooden Bldgs.	Jan. 2, 1929		20 Years	\$ 20,000.	\$	\$1000.	\$1000.
“ Steamers	do	10 Years	20 “	175,000		8750.	8750.
Furniture & Fixs.	“	“	10 “	5,000		500.	500.
Autos		New		8,249.25		900.	900.
						<u>11150—</u>	<u>11150—</u>

AFFIDAVIT

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1932 and the Regulations issued thereunder.

F. A. WILSON

President.

W. T. WILSON

[Corporate Seal]

Treasurer.

Sworn to and subscribed before me this 31 day of March, 1933.

W. J. O'CONNOR,

[Notarial Seal]

Dep. Coll. [125]

CONSENT FIXING PERIOD OF LIMITATION
UPON ASSESSMENT OF INCOME AND
PROFITS TAX

IT:E:Aj

RLT-25579

....., 193

In pursuance of the provisions of existing Internal Revenue Laws Wilson Brothers and Company, a taxpayer of San Francisco, California, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer for the taxable year (or years) 1932, under existing acts, or under prior revenue acts, may be assessed at any time on or before Dec. 30, 1935, except that, if a notice of a deficiency in tax is sent to said taxpayer by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

WILSON BROS. & CO.

Taxpayer.

[Seal*]

By F. A. WILSON,

Pres.

GUY T. HELVERING

Commissioner of Internal Revenue.

By C C D

5/2/35.

(Date)

*If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal, if any, of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy

of the resolution passed by the board of directors, giving the officer authority to sign the consent. [126]

RLT/REK-2

Mailed

May -4 1935

IT:E:Aj

RLT-25579

Mr. L. L. Pryor,

155 Sansome Street,

San Francisco, California.

In re: Wilson Brothers and Company,

1312 Russ Building,

San Francisco, California.

Sir:

Receipt is acknowledged of your letter dated April 24, 1935, and the consent transmitted therewith, extending the period of limitation for assessment of income tax on the return of the above-named taxpayer for the year 1932 to December 30, 1935.

The consent has been accepted by the Commissioner. In this connection it is desired to assure you that it is our purpose to proceed to a final determination of the tax liability as expeditiously as possible, and your cooperation to that end will be appreciated.

Respectfully,

CHAS. T. RUSSELL,

Deputy Commissioner.

By (Signed) J. W. CARTER

Chief of Section.

RLT/CCM-2

[127]

CONSENT FIXING PERIOD OF LIMITATION
UPON ASSESSMENT OF INCOME AND
PROFITS TAX

IT:E:Aj

RLT-25579

Jan. 31, 1935

In pursuance of the provisions of existing Internal Revenue Laws Wilson Brothers and Company, a taxpayer of 1312 Russ Building, San Francisco, California, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer for the taxable year (or years) 1932 under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1935, except that, if a notice of a deficiency in tax is sent to said taxpayer by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

WILSON BROS. & CO.

Taxpayer.

[Seal*]

By F. A. WILSON,

President.

GUY T. HELVERING

Commissioner of Internal Revenue.

By C C D

3/1/35.

(Date)

*If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal, if any, of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

RLT/AA3

[Endorsed]: Petitioner's Exhibit No. 3. Admitted in evidence June 6, 1939. [128]

ADJ to be had

Form 1120
CORPORATION INCOME AND EXCESS PROFITS TAX RETURN
(Individual's Form)

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN
For Calendar Year 1933

Page 1 of Return

No. 781
Cub. 855843

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

WILSON BROS. & CO.
1512 RUSS BUILDING,
SAN FRANCISCO, CALIF.

State of Nevada
Date of Incorporation Dec. 14, 1928

MAR 15 1934

Date of Incorporation Dec. 14, 1928
Under the Laws of What State or Country Nevada

The Corporation's Books are in the Care of Located at
Kind of Business Trading Is This a Consolidated Return? NO If so, How Many Corporations?
Is a Foreign Corporation, State Whether Resident or Nonresident If Nonresident, State Amount of Income Excluded Therefrom or From Gross Income, \$

ATTACH ASSISTANCE HERE

GROSS INCOME

1. Gross Sales (where inventories are an income-determining factor), \$	Less Returns and Allowances, \$	Net Sales, \$	98,862.09
2. Less Cost of Goods Sold:			
(a) Inventory at beginning of year			
(b) Material or merchandise bought for manufacture or sale	90,337.48		
(c) Miscellaneous costs (From Schedule A, Column 1): (1) Salaries and wages, \$			
(2) Other costs, \$			
(d) Total of lines (a), (b), and (c)	6,500		83,837.49
(e) Less inventory at end of year			
3. Gross Profit from Sales (Item 1 minus Item 2)			8,424.60
4. Gross Receipts (where inventories are not an income-determining factor)			
5. Less cost of operations (From Schedule A, Column 2): (a) Salaries and wages, \$			
(b) Other costs, \$			
6. Gross Profit from Inventories are not an income-determining factor (Item 4 minus Item 5)			
7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.			9,035.81
8. Dividends			495
9. Royalties			
10. (a) Profit from Sale of Stocks and Bonds held 1 year or less (From Schedule B, Total (a))			40,082.87
(b) Profit or Loss from Sale of all other Assets (From Schedule B, Total (b))			
11. Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1932			17,541
(b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1932			
(c) Foreign Corporations			
12. Other Income (State nature of income) (Use separate schedule, if necessary)			22,078.01
13. TOTAL INCOME IN ITEMS 3, AND 6 TO 12, INCLUSIVE			75,579.28

DEDUCTIONS

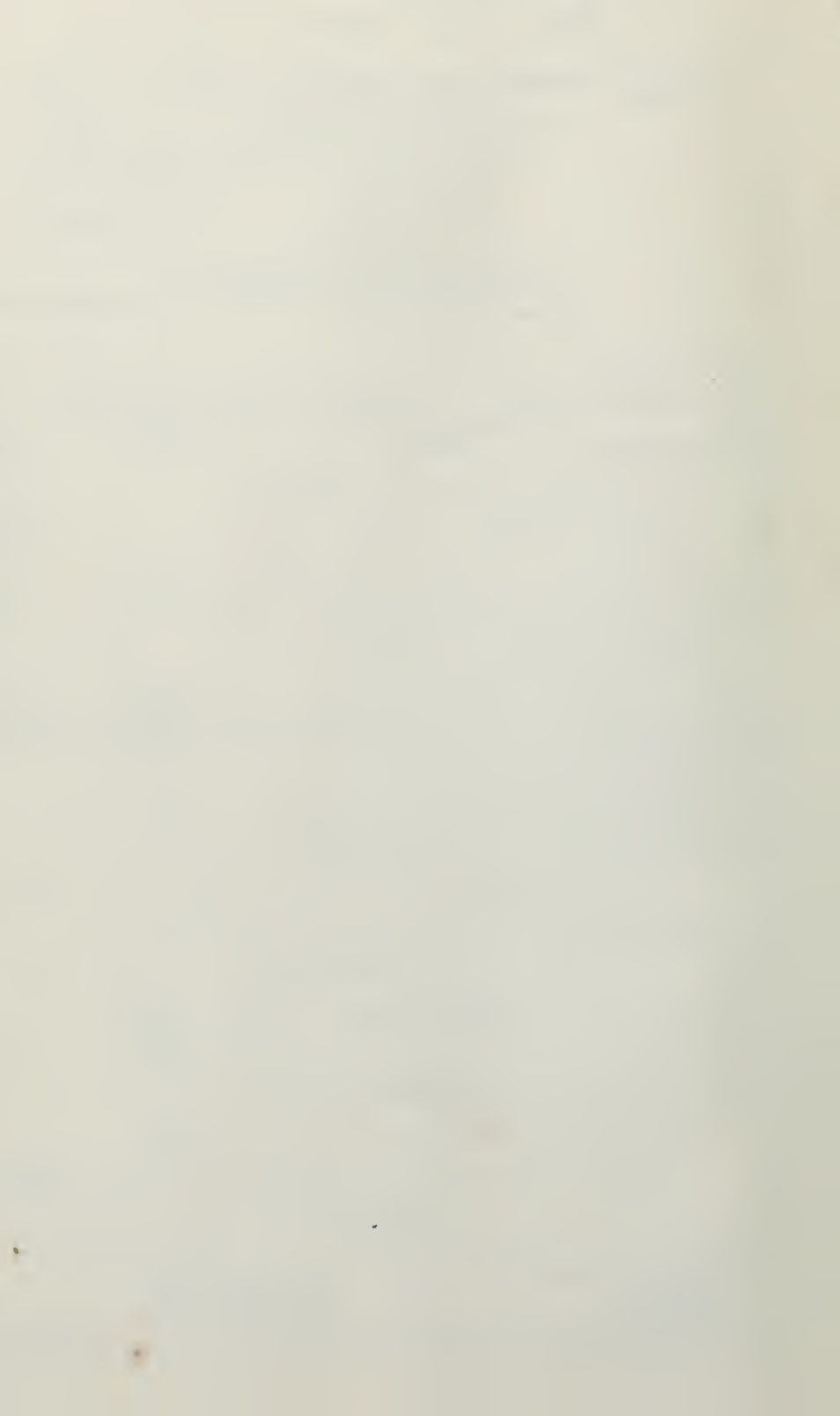
14. Compensation of Officers (From Schedule C)			None
15. Rent on Business Property			1,140
16. Repairs (From Schedule D): (a) Salaries and Wages, \$			
(b) Other Costs, \$			
17. Interest			
18. Taxes (From Schedule E)			1,284.18
19. Losses by Fire, Storm, etc. (From Schedule F)			4,412.26
20. Bad Debts (From Schedule G)			21,384.04
21. Dividends (From Schedule H)			17,541
22. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I)			20,649.85
23. Depletion of Mines, Oil and Gas Wells, Timber, etc. (From Schedule J)			
24. Other Deductions Authorized by Law (Specify below, or on separate sheet): (a) Salaries and wages (Not included in items 2, 4, 14, or 18 above)			5,785
(b) General Expense			3,501.70
25. TOTAL DEDUCTIONS IN ITEMS 14 TO 24			75,690.03
26. NET INCOME (Item 13 minus Item 25)			110.75

COMPUTATION OF TAX

Income Tax		Excess Profits Tax	
1. Not Excess Profit Tax		2. Excess Profit Tax	
3. Total Tax		4. Total Tax	

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable to payee.

9-1



SCHEDULE E—BALANCE SHEETS (See Instruction 6)

Item	Balance as Current Year		End of Current Year	
	Amount	Total	Amount	Total
ASSETS				
1. Cash		\$ 1,046,777.57		\$ 1,022,125.45
2. Notes receivable		14,000		
3. Accounts receivable	\$ 211,428.84		\$ 312,042.54	
Less reserve for bad debts		211,528.96	\$ 160.80	309,901.54
4. Investments:				
Raw materials				
Work in process			\$ 6,500	
Finished goods				
Supplies				\$ 6,500
5. Investments (securities):				
Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia				
Securities issued under the Federal Farm Loan Act, or under such Act as amended, and obligations of United States possessions				
Obligations of the United States				
6. Other investments:				
Stocks of domestic corporations	\$ 1,000,945.50		\$ 1,032,190.55	
Bonds of domestic corporations	15,425		15,445	
Stocks and bonds of foreign corporations				
All other investments or loans	122,800	\$ 1,134,846.50	108,000	\$ 1,150,636.56
7. Deferred charges:				
Prepaid insurance				
Prepaid taxes				
All other				
8. Capital assets:				
Land	\$ 20,000		\$ 20,000	
Buildings	20,000		20,000	
Machinery and equipment	7,750.00		7,750.00	
Furniture and fixtures	5,000		5,000	
Delivery equipment				
Less reserves for depreciation (except on land)	\$ 62,750.50		\$ 62,750.50	
	\$ 85,250.50	\$ 55,000.00	\$ 12,400.50	\$ 50,550.14
9. Prepaid				
10. Good will				
11. Other assets (describe fully):				
12. Total Assets		\$ 2,822,374.45		\$ 2,829,510.71
LIABILITIES				
13. Notes payable (less than one year)				
14. Accounts payable		\$ 2,044.68		\$ 2,378.71
15. Bonds and notes (not covered by mortgages)				
16. Mortgages (including bonds and notes so covered)				
17. Accrued expenses:				
Interest				
Taxes			400.00	
All other				400.00
18. Other liabilities (describe fully):				
19. Capital stock:				
Preferred stock (see stock in treasury)				
Common stock (see stock in treasury)		\$ 500,000.00		\$ 500,000.00
20. Reserves				
21. Undivided profits		19,209.78		36,732.05
22. Total Liabilities		\$ 2,822,374.45		\$ 2,829,510.71

Remarks:

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

1. Net income from Form 99, page 1 of the return	11,878
2. Miscellaneous items	
(a) Interest on obligations of the United States, or any political subdivision thereof, or the District of Columbia	
(b) Interest on securities issued under the Federal Farm Loan Act, or under such Act or amended	
(c) Interest on obligations of the United States or its possessions	
(d) Dividends distributable under Section 55 (a) of the Revenue Act of 1938	17,541
(e) Proceeds of life insurance policies paid upon the death of the insured	
(f) Other items of miscellaneous income to be detailed:	
(1) _____	
(2) _____	
(3) _____	
3. Changes against surplus for bad debts, if item 2, page 1 of return, is an addition to a surplus	
4. Changes against surplus for contingencies, etc. (to be detailed):	
(a) _____	
(b) _____	
(c) _____	
5. Total of Lines 1 to 4, inclusive	
6. Total from Line 2	
7. Net profit for year, as shown by books, before any adjustments on items therein (Line 4 minus Line 5)	
8. Gains and undivided profits as shown by balance sheet at close of preceding taxable year	14,301.75
9. Other credits to surplus (to be detailed):	
(a) _____	
(b) _____	
(c) _____	
10. Total of Lines 7 to 9, inclusive	
11. Total from Line 8	
12. Gains and undivided profits as shown by balance sheet at close of taxable year (Line 8 minus Line 10)	36,752.00

13. Undeductible deductions	
(a) Dividends, distributions, and contributions	
(b) Interest and profits from paid to the United States and such item paid to its possession or being otherwise if claimed on a credit in item 2, page 1 of the return	
(c) Federal taxes paid on tax-deferred account books	
(d) Capital improvement taxes tending to increase the value of the property concerned	
(e) Fuel taxes and taxes, additions, or improvements tending to increase on the basis	
(f) Depreciation and amortization	
(g) American payments paid on the life of any other or on annuities when the corporation is directly or indirectly a beneficiary	
(h) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation	
(i) Additions to surplus for bad debts which are not included in item 2, page 1 of return	
(j) Additions to surplus for contingencies, etc. (to be detailed):	
(1) _____	
(2) _____	
(3) _____	
14. Total of Line 13	
15. Dividends paid during the taxable year (state whether paid to each, each of the corporations, or other property)	
(a) Date paid _____ Character _____	None
(b) Date paid _____ Character _____	
(c) Date paid _____ Character _____	
(d) Date paid _____ Character _____	
16. Other debts to surplus (to be detailed):	
(a) _____	
(b) _____	
(c) _____	
17. Total of Lines 13 and 16	

NET INCOME OR DEFICIT REPORTED IN RETURN FOR 1938 BEFORE DEDUCTING NET LOSS FOR PRIOR YEAR

1. Enter amount of net income or deficit for 1938 before deducting net loss for 1937 11,878

2. Enter amount deducted in return for 1938 as net loss for 1937 11,740.89

KIND OF BUSINESS

3. State the main business engaged in, also whether acting as principal or as agent or commission; state if inactive or in liquidation:

- Check the proper block below to indicate the general industrial division in which the corporation's main income-producing business falls:
- Agriculture and related industries, including fishing, forestry, fur harvesting, etc.; also leasing of such property.
 - Mining and quarrying, including gas and oil wells; also leasing of such property.
 - Manufacturing—
 - Food products and beverages.
 - Tobacco.
 - Textiles and textile products.
 - Leather and leather products.
 - Rubber and related products.
 - Lumber and wood products, including floor furniture.
 - Paper, pulp and products.
 - Printing, publishing, and allied businesses.
 - Chemicals and allied products, including petroleum products.
 - Stone, clay, and glass products.
 - Metal and metal products, including precision metals and products.
 - Other manufacturing.
 - Construction—construction, buildings, bridges, railroads, ships, etc.; also equipping and installing operating systems, devices, or machinery with all their manufacturing.
 - Transportation—air, water, canal, motor, etc.; also leasing of such property.
 - Public utilities—electric light or power, gas (artificial or natural), pipe lines, telephone, telegraph, or radio, radio-grams, heating, hot water, etc.; also leasing of such utilities.
 - Storage—wholesale goods, dry-dock, warehouses, auto deposit vaults, etc.; also leasing of such property.
 - Trading—wholesale, retail, or commission.
 - Service—professional, business, amusement, and domestic, including hotels, restaurants, laundries, etc.
 - Finance—banks and other financial organizations, insurance, real estate; also brokers and agents.

AFFILIATIONS WITH OTHER CORPORATIONS

4. In this consolidated return? Yes If so, proceed from the Collector of Internal Revenue for your district Form 991, Affiliations Schedule, which shall be filed in, over to, and filed as a part of this return—See Section 141 of the Revenue Act of 1938 and Instruction 41.

5. Was the income of this corporation included in a consolidated return for the prior year? _____
If so, give name of corporation which filed the consolidated return. _____

PREDECESSOR BUSINESS

6. Did the corporation file a return under the same name for the preceding taxable year? Yes Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? If answer is "yes," give name and address of each predecessor business, and the date of the change in entity. _____

Upon such change was any asset value increased or decreased? If the answer is "yes," attach balance sheets of old business and opening balance sheets of new business must be furnished.

BASES OF RETURN

7. Is this return made on the basis of cash receipts and disbursements? Yes If not, describe fully what other basis or method was used in computing net income. _____

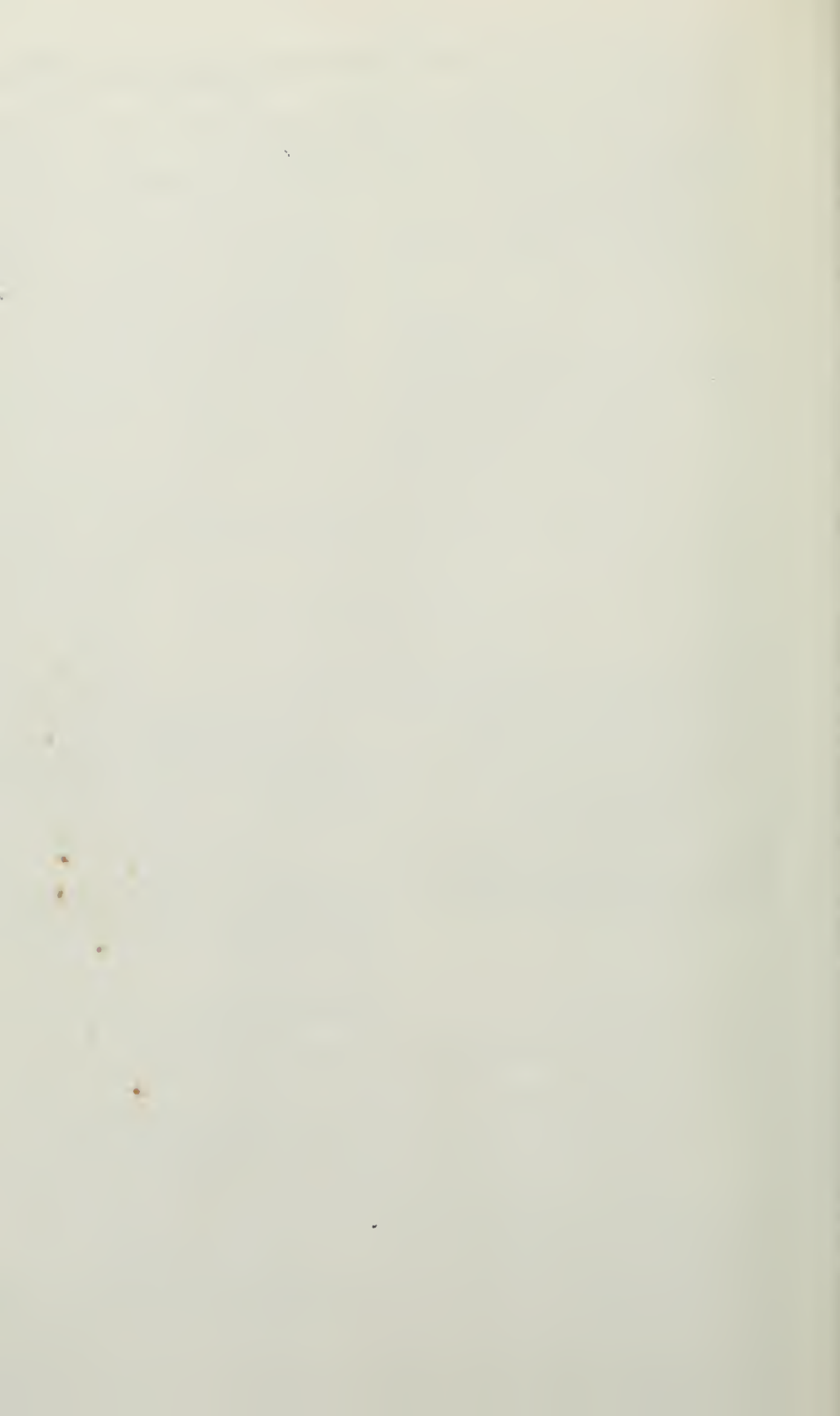
VALUATION OF INVENTORIES

8. State whether the inventories at the beginning and end of the taxable year was valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock. _____

COST

LIST OF ATTACHED SCHEDULES

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the preparer should be placed on each separate schedule accompanying the return.



Schedule A

1. Cost of sales (where inventories are an income-determining factor)

[Not filled in]

2. Cost of operations (where inventories are not an income-determining factor)

[Not filled in]

Schedule B

Profit from Sale of Stocks, Bonds, Real Estate, etc.

[Not filled in]

Schedule C—Compensation of Officers

None

Schedule D—Cost of Repairs

[Not filled in]

Schedule E—Taxes Paid

[Not filled in]

Schedule F—Explanation of Losses by Fire, Storm, etc.

[Not filled in]

Schedule G—Bad Debts

[Not filled in]

Schedule H—Dividends Deductible

[Not filled in]

Schedule I—Explanation of Deduction for Depreciation

1. Kind of Property	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquisition	5. Cost	6. March 1, 1913, Value if Acquired Prior to That Date	7. Depreciation Allowed (or Allowable) in Prior Years	8. Depreciation (or Allowable) Allowable This Year
Wooden Bldg.	Jan. 2, 1929		20 Years	\$ 20,000	\$	\$1000.	\$ 1000.
“ Steamers	“	10 Years	10 “	175,000		8750.	17500.
Furniture & Fixtures	“		10 “	5,000		500.	500.
Autos		New	5 “	8,249.25		900.	1649.85

AFFIDAVIT

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1932 and the National Industrial Recovery Act and the Regulations issued thereunder.

F. A. WILSON

President

W. T. WILSON

[Corporate Seal]

Secretary

Sworn to and subscribed before me this 15th day of March, 1934.

W. SHINE,

[Notarial Seal]

Dep. Coll. [132]

NOTICE TO CORPORATIONS

This form should be executed and [illegible] Income Tax Form 1120 for the calendar year 1933. If the corporation merely [illegible] person or persons employed to assist in the preparation of the return, the name [illegible] advisor, together with a statement showing the extent to which such advice was received, is sufficient. If the return was

actually prepared by any such person or persons, this form must be signed and sworn to by such person or persons.

Did the corporation employ anyone especially to prepare or advise in the preparation of its income tax return for the calendar year 1933? (Answer "yes" or "no")—No. If so, give name and address and state to what extent such assistance or advice was received:

I/We, acting as.....(Attorney or advisor) for the hereto subscribed taxpayer, affirm that I/we prepared the return, that the information set out in the return and accompanying schedules, if any, correctly and truly represents the information furnished or discovered by me/us during the course of preparation of the return, and that such information is true to the best of my/our information and belief.

.....
(Attorney or advisor)
.....

.....
(Address)
.....

Sworn to and subscribed before me this.....day of....., 1934.

.....
(Signature of officer administering oath) (Title)
[Notarial Seal] [133]

Form 1100

Treasury Department
Internal Revenue Service

RETURN OF INFORMATION

By Brokers and Other Agents—Calendar Year 1933

Name and address of guarantor of account:

Names and addresses of others with power to
make withdrawals of cash, securities, or commodi-
ties from the account:

Name and address of customer and title of account:

Wilson Bros. & Co.,
1312 Russ Bldg.,
San Francisco, Calif.

Total purchases, \$107,860. Total sales, \$120,821.

Name and address of broker or agent:

Francis A. Wilson,
1312 Russ Bldg.,
San Francisco, Calif.

Instructions

Prepare this form in accordance with the instruc-
tions on return Form 1100-A. Forward with return
Form 1100-A to reach the Commissioner of Internal
Revenue, Sorting Section, Washington, D. C., on or
before February 15, 1934. [134]

1933 RETURN OF CAPITAL STOCK TAX

For Year Ending June 30, 1933

Domestic Corporations

(Sec. 215, National Industrial Recovery Act,
73d Congress, Public, No. 67)

This return must be filed with the Collector of Internal Revenue for your district on or before July 31, 1933, and the tax must be paid on or before that date.

Duplicate 781
First California
Assessment List, Form 23A
Sep. 1933
43526

Examined by:

-
1. Name—Wilson Bros. & Co.,
 2. Address—1312 Russ Bldg., San Francisco, California
 3. Name of parent company, if any— (District filed—)
 4. Name of subsidiary, if any— No. shares held—
(District filed—)
 5. Nature of business in detail—Lumber & Shipping
 6. Incorporated or organized in State of—Nevada
Month—November Year—1928
See Instructions on Reverse Side
 7. Date of close of the last income-tax taxable year ending on or prior to the year ended June 30, 1933*—December 31, 1932.
*If no income-tax taxable year ending on or prior to year ended June 30, 1933, use date of organization.
 8. Capital account as shown on balance sheet as of the date set forth in item 7 (no other date should be used):

	<u>Number of shares</u>	<u>Par value per share</u>	<u>Total</u>
(a) Common stock	20		\$2500000.
(b) First preferred stock.....			
(c) Second preferred stock—			
(d) Surplus (or deficit).....			19300.75
(e) Undivided profits.....			
			<hr/>
(f) Total			25019309.75

Computation of Tax

9. Original declared value for entire capital stock as of the date shown in item 7.....	\$400000.
10. Tax at rate of \$1 for each full \$1,000 in item 9 (omit cents).....	400.
11. Penalty of 25 percent for delinquency in filing return	
12. Interest	
<hr/>	
13. Total tax, penalty and interest.....	

Sep. 5, 1933

State of California,
County of San Francisco—ss:

We, F. A. Wilson, President, and W. T. Wilson, Treasurer, of the corporation for which this return for capital stock tax imposed by section 215 of the National Industrial Recovery Act is made, being severally duly sworn, each for himself, deposes and says that the items entered in the foregoing report, including any statements attached to or accompanying this return, are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct.

F. A. WILSON
President.
W. T. WILSON
Treasurer.

Sworn to and subscribed before me this 31st day
of August, 1933.

[Illegible]

[Illegible]

[Seal]

(Official capacity)

[Endorsed]: Petitioner's Exhibit No. 4. Admitted
in evidence June 6, 1939. [135]

PETITIONER'S EXHIBIT, No. 5

Form 1120
CORPORATION INCOME TAX RETURN
(Modified Form)

FILED WITH THIS RETURN
CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN
For Calendar Year 1934

Page 1 of Return

13,632.27
590-681.65

For Fiscal Year began 1934, and ended 1935
FIRST FAMILY CORPORATION'S NAME AND BUSINESS ADDRESS
WILSON BROS. & CO.
1112 - Russ Building
San Francisco, California
(Print office and State)

1571
855786
i-Caja
Date of Incorporation Dec. 14, 1928
Under the Laws of what State or Country NEVADA

It is Essential, Except Where Otherwise Provided in the Instructions, That This Form be Completely Filled in Respect of Any Statements, Schedules, or Reports Indicated Herein

The Corporation's Books are in Care of _____ Located at _____
Kind of Business (as defined) Wholesale Larder In This a Consolidated Return of Related Corporations? No If so, of How Many Corporations?
Is a Family Corporation, Sole Wholesaler, or Proprietor? No If Proprietor, State Amount of Income Excluded According to Part One Section 5
Is the Corporation a personal holding company within the meaning of Section 101 of the Revenue Act of 1934? No (If so, an additional return on Form 1000 is sent to this.)

ATTACH SCHEDULES HERE

GROSS INCOME

Table with columns for description, amount, and total. Rows include: 1. Gross Sales (Net Sales \$ 170,239.51), 2. Less Cost of Goods Sold (Total \$ 147,553.58), 3. Gross Profit from Sales (\$ 20,152.56), 4. Gross Receipts (Total \$ 160,086.95), 5. Less cost of operations (Total \$ 3,946.60), 6. Gross Profit (Total \$ 14,400.44), 7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc. (Total \$ 597), 8. Dividends (Total \$ 2,624.80), 9. Dividends on Stock of Domestic Corporations (Total \$ 2,505.7), 10. Other Income (Total \$ 63,901.60).

DEDUCTIONS

Table with columns for description, amount, and total. Rows include: 15. Compensation of Officers (None), 16. Rent on Business Property (1,140), 17. Repairs (Total), 18. Interest, 19. Taxes (394.09), 20. Losses by Fire, Storm, etc. (Steamship operations 2,175.18), 21. Bad Debts (16,144.40), 22. Dividends (2,505.7), 23. Depreciation (11,399.85), 24. Depletion of Mines, Oil and Gas Wells, Timber, etc. (General Expense 4,117.84), 25. Other Deductions Authorized by Law (Total Deductions \$ 65,242.96), 26. Net Income (Loss \$ 1,341.34).

COMPUTATION OF TAX

Table with columns for Income Tax and Excess-Profits Tax. Rows include: 27. Net Income (Loss) for Income Tax, 28. Net Income for Excess-Profits Tax Computations, 29. Less 10% of net income, 30. Excess-Profits Tax (2% of item 29), 31. Excess-Profits Tax (2% of item 29), 32. Balance of Income Tax (Total \$ 1,341.34).

Item	Balance or Valued Year		End of Valued Year	
	Amount	Total	Amount	Total
ASSETS				
1. Cash		\$ 1,022,123.85		\$ 972,147.49
2. Notes receivable				
3. Accounts receivable	\$ 1,1062.34		\$ 247,661.49	
(a) Less reserve for bad debts	\$ 2160.80	\$ 885.54	\$ 6,884.90	\$ 340,776.59
4. Inventories:				
(a) Raw materials				
(b) Work in process				
(c) Finished goods	\$ 6,500		\$ 2,946.80	
(d) Supplies				
		\$ 6,500.00		\$ 2,946.80
5. Investments (nontransferable):				
(a) Obligations of a State, Territory, or any political subdivision thereof, or District of Columbia, or United States possession				
(b) Obligations of instrumentalities of the United States				
(c) Obligations of the United States				
6. Other investments:				
(a) Stocks of domestic corporations	\$ 1,032,190.55		\$ 1,077,772.08	
(b) Bonds of domestic corporations	\$ 12,446		\$ 24,745	
(c) Stocks and bonds of foreign corporations				
(d) All other investments or loans	\$ 105,000	\$ 1,150,635.55	\$ 96,600	\$ 1,199,123.05
7. Deferred charges:				
(a) Prepaid insurance				
(b) Prepaid taxes				
(c) All other				
8. Capital assets:				
(a) Land	\$ 20,000		\$ 20,000	
(b) Buildings	\$ 20,000		\$ 20,000	
(c) Machinery and equipment	\$ 7,750.58		\$ 7,750.58	
(d) Furniture and fixtures	\$ 5,000		\$ 5,000	
(e) Delivery equipment				
(f) Less reserves for depreciation (except on land)	\$ 62,750.50		\$ 62,750.50	
	\$ 12,400.58	\$ 50,250.15	\$ 15,050.20	\$ 47,700.80
9. Patents				
10. Good will				
11. Other assets (describe fully):				
TOTAL ASSETS		\$ 2,539,510.71		\$ 2,565,636.93
LIABILITIES				
12. Notes payable (less than one year)				
13. Accounts payable		\$ 2,278.71		\$ 2,245.39
14. Bonds and notes (not secured by mortgage)				
15. Mortgages (including bonds and notes so secured)				
16. Accrued expenses:				
(a) Interest				
(b) Taxes	\$ 400	\$ 400		
(c) All other				
17. Other liabilities (describe fully):				
18. Capital stock:				
(a) Preferred stock (less stock in treasury)				
(b) Common stock (less stock in treasury)		\$ 2,500,000.00		\$ 2,538,000.00
19. Surplus				
20. Undivided profits		\$ 36,732.00		\$ 25,447.64
TOTAL LIABILITIES		\$ 2,539,510.71		\$ 2,565,636.93

Remarks

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

Table with multiple columns for reconciliation of net income and analysis of changes in surplus. Includes sections for C-eligible deductions, changes against reserves, and total lines.

NET INCOME (OR DEFICIT) REPORTED IN RETURN FOR CALENDAR YEAR OR FISCAL YEAR END

1. Net income, for 1964, \$

NATURE OF BUSINESS

- Check the block to indicate the industrial division in which the corporation's main business producing business falls. Includes Manufacturing, Wholesale-retail, and Service-repair.

APPLICABLE WITH OTHER CORPORATIONS (See instruction 8)

1. Is this a consolidated return? If so, prepare from the collector of the return for your district Form 941, Additional Schedule, which shall be filed in, return to, and be part of the return.

2. Was the income of this corporation included in a consolidated return for the prior year? If so, give name of corporation which filed the consolidated return.

FINANCING BUSINESS

1. Did the corporation file a return under the same name for the preceding taxable year? If so, was the corporation in any way an employer, agent, commission, or representative of a business in existence during that or any prior year since December 31, 1947?

BASE OF RETURN

1. Is this return made on the basis of cost receipts and disbursements? If not, describe fully what other basis or method was used in computing net income.

VALUATION OF INVENTORIES

1. State whether the inventory at the beginning and end of the taxable year was valued at 75% or market, whichever is lower. If other than 75%, state why not and the inventory was not inventoried with cost.

PREPARATION OF RETURN (See instruction 8)

1. Did any person or persons advise the corporation in respect of any question or matter affecting net or available of the return, or assist in filing the corporation in the preparation of this return? If so, give the name and add actually prepared the return for the corporation? If so, give the name and add each person or persons and state the nature and extent of the assistance or advice received and the total schedule B amount of which the question or advice was received. If the return was actually prepared by any person or persons other than the corporation, state the names of the individuals who prepared the return and the manner in which it was furnished or obtained by each person or persons.

INFORMATION RETURN

1. Did the corporation make a return of information on Form 980 and 981 for the taxable year 1964?

LIST OF ATTACHED SCHEDULES

1. Enter below a list of all schedules accompanying this return, giving for each a brief title or subtitle number. The name and address of the corporation should be placed on each schedule and accompanying the return.

Page 4 of Return **SCHEDULE A (See Instructions 9 and 10)**

A. COST OF SALES (OTHER EXPENSES ARE AN INCOME-DETERMINING FACTOR)		B. COST OF OPERATIONS (OTHER EXPENSES ARE NOW AN INCOME-DETERMINING FACTOR)	
From	A. AMOUNT (Enter on Item 14)	From	A. AMOUNT (Enter on Item 14)
Salaries and wages	0	Salaries and wages	0
Other costs	0	Other costs	0

SCHEDULE B—CAPITAL GAINS AND LOSSES (See Instruction 10)

1. Description of Property	2. Date Acquired	3. Date Sold	4. AMOUNT RECEIVED	5. COST	6. MAJOR U.S. GOVERNMENT BONDS THAT DATE	7. COST OR MARKET VALUE AT ACQUISITION OR AS OF 12/31, 1953	8. DEPRECIATION ALLOWED (ON ALLOWABLE) FROM ACQUISITION OR AS OF 12/31, 1953 (Paraph details)	9. Gain or Loss
	Mo. Day Year	Mo. Day Year						
Net Gain or Loss (Enter on Item 16) (Capital losses are allowable only to the extent of \$3,000 plus capital gains)								

Note: (1) how property was acquired; (2) whether at time of sale or exchange purchaser owned more than 50% of your outstanding stock.

Every sale or exchange of stock should be reported in detail, including name and address of corporation, class of stock, number of shares, capital changes affecting same (stock dividends, other nontaxable dividends, stock rights, etc.).

Cost of property must be entered in column 5 if a loss is claimed in column 9.

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 13)

1. NAME AND ADDRESS OF OFFICER	2. OVERALL TITLE	3. Total Pay or Other Compensation	SHARES OF STOCK OWNED		4. AMOUNT OF Compensation (Enter on Item 18)
			Common	Preferred	
					NONE

Note: Schedule C-1 must also be filed with this return if compensation in excess of \$15,000 was paid to any officer or employee.

SCHEDULE D—COST OF REPAIRS (See Instruction 17) **SCHEDULE E—TAXES PAID (See Instruction 19)**

1. From	2. AMOUNT (Enter on Item 17)	1. From	2. AMOUNT (Enter on Item 19)
Salaries and wages	0		0
Other costs	0		0

SCHEDULE F—EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC. (See Instruction 20)

1. Kind of Property	2. Date Acquired	3. Cost	4. DEPRECIATION ALLOWED	5. DEPRECIATION ALLOWABLE FROM ACQUISITION	6. INSURANCE AND SALVAGE VALUE	7. DEDUCTIBLE LOSS (Enter on Item 21)
		0	0	0	0	0

Note how property was acquired.

SCHEDULE G—BAD DEBTS (See Instruction 21) **SCHEDULE H—INCOME FROM DIVIDENDS (See Instruction 17)**

1. Year	2. PAID OR ACCRUED	3. Bad Debts	Amounts below of dividends received during the year, stating the amount and the name and address of the corporation which declared the dividends.
1950	0	0	
1951	0	0	
1952	0	0	
1953	0	0	
1954	0	0	

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 23)

1. Kind of Property (If building, state material of which constructed)	2. Date Acquired	3. Cost or Market Value at Acquisition (Indicate Year)	4. AMOUNT Fully Depreciated at End of Year	5. DEPRECIATION ALLOWED (on Allowable) in Prior Years	6. DEPRECIATION COST OR OTHER VALUE AS OF 12/31, 1953	7. LIFE (Years or Months)	8. DEPRECIATION ALLOWABLE FROM ACQUISITION	9. DEPRECIATION ALLOWABLE THIS YEAR
Wooden Ridge, 2 yrs	Jan 2, 1953	20,000	0	5,000	15,000	5 yrs	15 yrs	500.00
3 Tractors		175,000	70,000	105,000				8750.00
Auto		2,000	2,000	0		10	2 yrs	125.00

SCHEDULE J—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 11)

1. Obligations or Securities	2. AMOUNT Owed	3. INTEREST RECEIVED OR ACCRUED	4. FEDERAL INCOME TAXES PAID	5. AMOUNT OWNED AS OF 12/31, 1953	6. INTEREST ON AMOUNT OF 12/31, 1953 (Enter on Item 11)
(a) Obligations of a State, Territory or political subdivision thereof, or the District of Columbia, or United States government.					
(b) Liberty Bonds and other obligations of United States issued on or before September 1, 1951.					
(c) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness.					
(d) Liberty Bonds and other Bonds and Treasury Bonds.					
(e) Obligations of municipalities of the United States other than obligations to be reported in (a) above.					

AFFIDAVIT (See Instruction 50)

We, the undersigned, president (or vice president, or chief principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, do hereby depose and say that this return (including its accompanying schedules and statements, if any) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1954, and the Internal Revenue Code thereunder.

Sworn to and subscribed before me this 16th day of March, 1954.

[Signatures]

NOTARIAL SEAL **DEPUTY SEAL**

AFFIDAVIT (See Instruction 51)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax and/or excess-profits tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Sworn to and subscribed before me this day of , 1954.

[Signatures]

NOTARIAL SEAL

(Signature of officer administering oath) (Name of firm or employer, if any)

1934 RETURN OF CAPITAL-STOCK TAX

For year ending June 30, 1934

Domestic Corporations

(Sec. 701, Revenue Act of 1934, 73d Congress,
Public, No. 216)

This return must be filed with the Collector of Internal Revenue for your district on or before July 31, 1934, and the tax must be paid on or before that date.

Duplicate 1571

First-California

September, 1934

(Page) 4413 (Line) 4

Examined by:

.....

1. Name Wilson Bros. & Co.
2. Address 1312 Russ Bldg., San Francisco, Calif.
3. Name of parent company, if any.....
(District filed.....)
4. Name of subsidiary, if any.....
No. shares held..... (District filed.....)
5. Nature of business in detail Wholesale Lumber.
6. Incorporated or organized in State of Nevada.
Month December. Year 1928.

Declaration of the Value of the Capital Stock
Important.—Before declaring a value for the capital stock, carefully read the instructions below, as a value once declared cannot later be amended.

If you file your income tax return on a calendar year basis, or would do so if subject to income tax,

declare in the space below a value for the entire capital stock of your corporation as of December 31, 1933, which you are willing to have accepted in this and subsequent years, as a basis, subject to statutory adjustments, on which to pay capital-stock tax and excess-profits tax.

If you file your income-tax return on a fiscal year basis, or would do so if subject to income tax, declare the value as of the close of such fiscal year.

If your corporation was organized during the year July 1, 1933, to June 30, 1934, both dates inclusive, and if neither the first calendar year nor the first fiscal year for income-tax purposes has ended during the year July 1, 1933, to June 30, 1934, both dates inclusive, declare the value as of the date of organization.

If your corporation is without a capital stock represented by shares, declare a value for the net worth of the corporation.

(See Instruction No. 3 for additional information)

7. *Value of Entire Capital Stock \$400,000.

Exemptions. (See Instruction No. 4)

8. Is exemption from the tax claimed? Answer Yes or No. (.....).
9. If exemption is claimed, check the block which shows basis of claim and furnish the information required on page 2.
- Section 101, Revenue Act of 1934.
- Insurance company.
- Not doing business.

*A specific and unqualified value must be shown in this space. If the capital stock is of no value insert the word "None."

Computation of Tax	For use of Taxpayer	For use of Department
10. Amount shown in item 7.....	\$400000	\$
11. Tax at rate of \$1 for each full \$1,000 in item 10 (omit cents).....	400	
12. Penalty of 25 percent for delin- quency in filing return.....		
13. Interest.....		[Stamped] 8524
14. Total tax, penalty, and interest.....	400	

Affidavit

We, the undersigned, president (or vice president, or other principal officer) and treasurer (assistant treasurer or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

[Corporate

Seal]

F. A. WILSON

President

W. T. WILSON

Treasurer.

Sworn to and subscribed before me this 30th day of Aug., 1934.

[Notarial Seal] C. MEHEGAN. [140]

D.C.

REVENUE ACT OF 1934

Title V—Capital-Stock and Excess-Profits Taxes
Section 701. Capital-Stock Tax

(a) For each year ending June 30, beginning with the year ending June 30, 1934, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of \$1 for each \$1,000 of the adjusted declared value of its capital stock.

(b) For each year ending June 30, beginning with the year ending June 30, 1934, there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent of \$1 for each \$1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

(c) The taxes imposed by this section shall not apply:

- (1) to any corporation enumerated in section 101;
- (2) to any insurance company subject to the tax imposed by section 201, 204, or 207;
- (3) to any domestic corporation in respect of the year ending June 30, 1934, if it did not carry on or do business during a part of the period from the date of the enactment of this act to June 30, 1934, both dates inclusive; or
- (4) to any foreign corporation in respect of the year ending June 30, 1934, if it did

not carry on or do business in the United States during a part of the period from the date of the enactment of this act to June 30, 1934, both dates inclusive.

(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of business or, if it has no principal place of business in the United States, then to the collector at Baltimore, Md. Such return shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. If the tax is not paid when due, there shall be added as part of the tax, interest at the rate of 1 per centum a month from the time when the tax became due, until paid. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, insofar as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe, with the approval of the Secre-

tary, but no such extension shall be for more than 60 days.

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under title II of the Revenue Act of 1926.

(f) For the first year ending June 30 in respect of which a tax is imposed by this section upon any corporation, the adjusted declared value shall be the value, as declared by the corporation in its first return under this section (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section (or as of the date of organization in the case of a corporation having no income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section). For any subsequent year ending June 30, the adjusted declared value in the case of a domestic corporation shall be the original declared value plus (1) the cash and fair market value of property paid in for stock or shares, (2) paid in surplus and contributions to capital, (3) its net income, (4) the excess of its income wholly exempt from the taxes imposed by title I over the amount disallowed as a deduction by section 24(a) (5) of such title, and (5) the amount of the dividend deduction allowable for income-tax purposes, and minus (A) the value of property dis-

tributed in liquidation to shareholders, (B) distribution of earnings or profits, and (C) the excess of the deductions allowable for income-tax purposes over its gross income; adjustment being made for each income-tax taxable year included in the period from the date as of which the original declared value was declared to the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section. The amount of such adjustment for each such year shall be computed (on the basis of a separate return) according to the income-tax law applicable to such year. For any subsequent year ending June 30, the adjusted declared value in the case of a foreign corporation shall be the original declared value adjusted (for the same income-tax taxable years as in the case of a domestic corporation), in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, to reflect increases or decreases in the capital employed in the transaction of its business in the United States.

Section 702. Excess-Profits Tax

(a) There is hereby imposed upon the net income of every corporation, for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under section 701, an excess-profits tax equivalent to 5 per centum of such portion of its net income for such income-tax taxable year as is in excess of $12\frac{1}{2}$ per centum of the adjusted declared value of its capital stock (or in the case of a foreign corporation the adjusted de-

clared value of capital employed in the transaction of its business in the United States) as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year) determined as provided in section 701. If the income-tax taxable year in respect of which the tax under this section is imposed is a period of less than 12 months, such adjusted declared value shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months. For the purposes of this section the net income shall be the same as the net income for income-tax purposes for the year in respect of which the tax under this section is imposed.

(b) All provisions of law (including penalties) applicable in respect of the taxes imposed by title I of this act, shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall be not applicable.

Section 703. Capital-Stock Tax and Excess-Profits Tax Imposed by National Industrial Recovery Act Sections 217(d) and (e) of the National Industrial Recovery Act are amended to read as follows:

“(d) The capital-stock tax imposed by section 215 shall not apply to any taxpayer in respect of any year except the year ending June 30, 1933.

“(e) The excess-profits tax imposed by section 216 shall not apply to any taxpayer in re-

spect of any taxable year ending after June 30, 1934.”

[Endorsed]: Petitioner’s Exhibit No. 5. Admitted in evidence June 6, 1939. [141]

PETITIONER’S EXHIBIT 6

Wilson Bros. and Co.

CASH IN BANKS

As at Dates Shown Hereunder

	January 1, 1932	December 31st,		
		1932	1933	1934
San Francisco Bank.....	\$403,750.00	\$51,324.00	none	none
Crocker First Nat'l Bank.....	—25.25	23,989.81	\$ 539.04	\$ 142.48
Wells Fargo Bank.....	320.83	21,324.42	8,647.39	21,415.06
Bank of America.....	259.79	none	none	52,149.82
Anglo California National Bank.....	4,694.28	none	none	none
	<u>\$408,999.65</u>	<u>\$96,638.23</u>	<u>\$9,186.43</u>	<u>\$73,707.36</u>

PETITIONER'S EXHIBIT 7

Wilson Bros. and Co.

STOCKS OF DOMESTIC CORPORATIONS

As at January 1, 1932

Number of Shares	Security	Cost	Approximate Market Value
400	Anglo National Corporation.....	\$ 21,000.00	\$ 6,800.00
900	Canadian Pacific R. R. Co.....	16,257.50	10,012.50
300	Continental Oil Co.....	1,842.50	1,800.00
203	Electric Bond and Share Co.....	4,937.50	2,207.62
100	Gulf Oil Co.....	3,307.50	2,675.00
1,100	Great Northern R. R. Co.....	23,362.50	19,250.00
100	International Harvester Co.....	3,832.50	2,400.00
700	The National Cash Register Co.....	9,752.50	5,687.50
300	Northern Pacific R. R. Co.....	4,952.50	4,762.50
500	New York Central R. R. Co.....	27,495.00	14,500.00
500	The Ohio Oil Co.....	3,650.00	2,812.50
500	The Pennsylvania Railroad Co.....	9,250.00	9,062.50
200	Royal Dutch Co.....	2,722.50	2,825.00
500	Standard Oil Co. of Indiana.....	8,850.00	7,250.00
700	Standard Oil Co. of Kentucky.....	9,872.50	9,625.00
200	Socony Vacuum Oil Co.....	1,977.50	1,825.00
900	Standard Oil Co. of California.....	24,905.00	22,500.00
900	Southern Pacific R. R. Co.....	44,342.50	24,975.00
400	Simmons Company	3,655.00	3,000.00
2,100	Shell Union Oil Co.....	9,242.50	6,300.00
2,238	Transamerica Corp.....	139,595.00	5,595.00
800	The Texas Corporation.....	12,165.00	9,600.00
400	Underwood Elliott Fisher Co.....	10,862.50	6,400.00
200	Union Oil Associates.....	3,197.50	2,225.00
1,100	Union Oil Co.....	15,642.50	14,025.00
2,500	Weeden and Co.....	100,000.00	75,000.00
		<u>\$516,670.00</u>	<u>\$273,115.12</u>

PETITIONER'S EXHIBIT 8

Wilson Bros. and Co.

STOCKS OF DOMESTIC CORPORATIONS

As at December 31, 1932

Number of Shares	Security	Cost	Approximate Market Value
200	A. T. & S. F. Railway.....	\$ 13,320.00	\$ 8,075.00
1,652	Byron Jackson Co.....	13,168.50	2,065.00
400	Anglo National Corporation.....	21,000.00	4,100.00
4,500	Continental Oil Co.....	26,262.50	27,000.00
1,900	Canadian Pacific Railroad.....	27,932.50	27,312.50
303	Electric Bond and Share Co.....	5,935.00	5,567.62
200	Gulf Oil Co.....	6,277.50	5,300.00
3,500	Great Northern R. R. Co.....	61,732.50	28,000.00
100	International Harvester Co.....	3,832.50	2,175.00
2,400	National Cash Register Co.....	24,572.50	18,300.00
900	Northern Pacific R. R.....	12,807.50	12,037.50
1,400	New York Central R. R. Co.....	49,965.00	26,425.00
1,300	The Ohio Oil Co.....	10,610.00	8,775.00
800	The Pennsylvania Railroad Co.....	13,877.50	11,400.00
1,000	Royal Dutch Co.....	14,175.00	20,750.00
500	Standard Oil Co. of Indiana.....	8,850.00	10,875.00
1,400	Standard Oil Co. of Kentucky.....	18,495.00	14,875.00
200	Socony Vacuum Oil Co.....	1,977.50	1,525.00
1,100	Standard Oil Co. of California.....	29,855.00	26,812.50
1,500	Southern Pacific R. R. Co.....	58,502.50	24,187.50
400	Simmons Co.	3,655.00	2,600.00
3,600	Shell Union Oil Co.....	14,642.50	18,900.00
2,238	Transamerica Corp.	139,595.00	12,029.25
1,800	The Texas Corp.....	23,340.00	25,200.00
500	Underwood Elliott Fisher Co.....	12,380.00	6,000.00
400	United Fruit Co.....	7,470.00	9,500.00
200	Union Oil Associates.....	3,197.50	12,675.00
1,100	Union Oil Co. of California.....	23,515.00	
2,500	Weeden and Co.....	100,000.00	62,500.00
		<u>\$750,943.50</u>	<u>\$434,961.87</u>

PETITIONER'S EXHIBIT 9

Wilson Bros. and Co.

STOCKS OF DOMESTIC CORPORATIONS

As at December 31, 1933

Number of Shares	Security	Cost	Approximate Market Value
300	A. T. & S. F. Railway.....	\$ 17,940.00	\$ 16,875.00
1,652	Byron Jackson Co.....	13,168.50	6,814.50
400	Anglo National Corp.....	21,000.00	1,260.00
4,500	Continental Oil Co.....	26,262.50	79,312.50
1,900	Canadian Pacific R. R. Co.....	27,932.50	24,462.50
303	Electric Bond and Share Co.....	5,935.00	3,636.00
500	General Electric Co.....	6,525.00	9,750.00
200	Gulf Oil Co.....	6,277.50	11,950.00
3,500	Great Northern R. R. Co.....	61,732.50	68,687.50
500	Great Northern Iron Properties.....	3,925.00	5,500.00
100	International Harvester Co.....	3,832.50	4,000.00
2,400	National Cash Register Co.....	24,572.50	43,500.00
1,100	Northern Pacific R. R.....	15,343.65	25,300.00
1,400	New York Central R. R. Co.....	49,965.00	46,725.00
1,300	The Ohio Oil Co.....	10,610.00	17,550.00
800	The Pennsylvania Railroad Co.....	13,877.50	24,000.00
1,000	Royal Dutch Co.....	14,175.00	36,000.00
500	Standard Oil Co. of Indiana.....	8,850.00	16,125.00
1,500	Standard Oil Co. of Kentucky.....	19,493.40	22,500.00
200	Socony Vacuum Oil Co.....	1,977.50	3,250.00
400	Swift and Co.....	6,670.00	5,700.00
300	Sears Roebuck and Co.....	4,302.50	12,750.00
1,100	Standard Oil Co. of California.....	29,855.00	45,100.00
1,500	Southern Pacific R. R.	58,502.50	29,625.00
400	Simmons Co.....	3,655.00	7,250.00
3,600	Shell Union Oil Co.....	14,642.50	28,350.00
2,238	Transamerica Corp.	139,595.00	15,106.50
1,800	The Texas Corp.....	23,340.00	43,875.00
500	Underwood Elliott Fisher Co.....	12,380.00	18,750.00
200	U. S. Steel Corp.....	9,140.00	9,550.00
200	Union Oil Associates.....	3,197.50}	24,537.50
1,100	Union Oil Co. of California.....	23,515.00}	
2,500	Weeden and Co.....	100,000.00	70,000.00
		<u>\$782,190.55</u>	<u>\$777,792.00</u>

PETITIONER'S EXHIBIT 10

Wilson Bros. and Co.

STOCKS OF DOMESTIC CORPORATIONS

As at December 31, 1934

Number of Shares	Security	Cost	Approximate Market Value
200	A. T. & S. F. Railway.....	\$ 13,320.00	\$ 10,750.00
1,652	Byron Jackson Co.....	13,168.50	11,977.00
400	Anglo National Corp.....	21,000.00	2,650.00
4,500	Continental Oil Co.....	26,262.50	84,937.50
2,600	Canadian Pacific R. R.....	36,155.00	29,900.00
303	Electric Bond and Share Co.....	5,935.00	2,272.50
900	General Electric Co.....	13,520.00	20,025.00
200	Gulf Oil Co.....	6,277.50	11,450.00
3,500	Great Northern R. R. Co.....	61,732.50	59,500.00
500	Great Northern Iron Properties.....	3,675.00	6,000.00
300	International Harvester Co.....	8,767.50	12,675.00
2,400	National Cash Register Co.....	24,572.50	42,300.00
1,100	Northern Pacific R. R.....	15,343.65	22,687.50
1,800	New York Central R. R. Co.....	57,510.00	36,450.00
1,300	The Ohio Oil Co.....	10,610.00	13,325.00
1,000	The Pennsylvania Railroad Co.....	18,537.50	24,375.00
1,000	Royal Dutch Co.....	14,175.00	29,250.00
500	Standard Oil Co. of Indiana.....	8,850.00	12,750.00
1,500	Standard Oil Co. of Kentucky.....	19,493.40	27,562.50
200	Socony Vacuum Oil Co.....	1,977.50	2,950.00
400	Swift and Co.....	6,670.00	7,600.00
300	Sears Roebuck and Co.....	4,302.50	11,887.50
1,100	Standard Oil Co. of California.....	29,855.00	35,750.00
1,800	Southern Pacific R. R. Co.....	63,480.00	32,400.00
400	Simmons Co.....	3,655.00	4,000.00
3,600	Shell Union Oil Co.....	14,642.50	25,200.00
2,238	Transamerica Corp.	139,595.00	13,148.25
1,800	The Texas Corp.....	23,340.00	37,800.00
500	Underwood Elliott Fisher Co.....	12,380.00	28,750.00
800	U. S. Steel Corp.....	26,785.00	31,200.00
200	Union Oil Associates.....	3,197.50}	31,750.00
1,800	Union Oil Co. of California.....	23,515.00}	
200	Westinghouse Electric Co.....	5,690.00	7,525.00
2,500	Weeden and Co.....	100,000.00	80,000.00
	Unidentified difference.....	—212.50	none
		<u>\$837,778.05</u>	<u>\$810,797.75</u>

PETITIONER'S EXHIBIT 11

170

Wilson Bros. and Co.

BONDS OF DOMESTIC CORPORATIONS

As at Dates Shown Hereunder

Par Value	Security	January 1, 1932		December 31, 1932		December 31, 1933		December 31, 1934	
		Cost	Market Value	Cost	Market Value	Cost	Market Value	Cost	Market Value
\$ 4,000.00	Union Oil Company of California, 1st lien s.f. 5/35.....	\$ 3,975.00	\$3,680.00	\$ 3,975.00	\$4,000.00	\$ 3,975.00	\$4,000.00	\$ 3,975.00	\$ 4,000.00
\$18,000.00	Kentucky Fuel Gas Corporation, 1st lien s.f. 6½% A bonds due 1942.....	9,000.00	900.00	9,000.00	} 412.50	9,000.00	} 860.00	9,000.00	} 1,935.00
15,000.00	Kentucky Fuel Gas Corporation, 1st lien s.f. 6½% A bonds due 1942.....			450.00		450.00		450.00	
\$33,000.00	Kentucky Fuel Gas Corporation, 1st lien s.f. 6½% A bonds due 1942.....					20.00		20.00	
\$43,000.00									
\$16,000.00	New York Central R. R.....							16,800.00	18,800.00
	Totals	\$12,975.00	\$4,580.00	\$13,425.00	\$4,412.50	\$13,445.00	\$4,860.00	\$30,245.00	\$24,735.00
	Deduct:								
	Charge to 1934 income in respect of partial worthlessness of Kentucky Fuel Gas Corp. debentures.....							5,500.00	
		\$12,975.00	\$4,580.00	\$13,425.00	\$4,412.50	\$13,445.00	\$4,860.00	\$24,745.00	\$24,735.00

PETITIONER'S EXHIBIT 18
Wilson Bros. and Co.

GENERAL LEDGER TRIAL BALANCES
(After Closing)

	January 1, 1932		December 31, 1932		December 31, 1933		December 31, 1934	
	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.
Bank of America, Los Angeles..	\$ 259.79						\$ 52,149.82	
Crocker First National Bank.....		\$ 25.25	\$ 23,989.81		\$ 539.04		142.48	
The San Francisco Bank.....	403,750.00		51,324.00				21,415.06	
Wells Fargo Bank.....	320.83		21,324.42		8,647.39			
Capital		2,500,000.00		\$2,500,000.00		\$2,500,000.00		\$2,535,000.00
Surplus		12,792.64		19,309.75		36,732.00		25,447.64
Treasury stock.....	250,000.00		250,000.00		250,000.00		250,000.00	
Treasury stock.....						400.00		10,000.00
Capital stock tax account.....								
Bond	12,975.00		13,425.00		13,425.00		7,925.00	
Bond Trading.....					20.00		16,820.00	
Merchandise	20,942.18				6,500.00		3,946.60	
Auto account.....	5,400.00		4,500.00		2,850.15		1,200.30	
Sales tax.....								1,188.06
Furniture and fixtures.....	3,500.00		3,000.00		2,500.00		2,000.00	
Reserve bad accounts.....						2,160.80		6,884.90
Real estate.....	47,000.00		46,000.00		45,000.00		44,500.00	
S. S. Idaho.....	56,250.00		52,500.00		45,000.00		41,250.00	
S. S. Oregon.....	75,000.00		70,000.00		60,000.00		55,000.00	
Str. Svea.....	6,420.36		9,081.78		10,804.01		12,861.01	
Str. Idaho minority interest.....		3,409.11		3,064.68		2,378.71		2,058.33
Str. Svea.....							350.00	
Atchison, Topeka & Santa Fe R. R.			13,320.00		17,940.00		13,320.00	
Anglo Natl. Corp.....	21,000.00		21,000.00		21,000.00		21,000.00	
Byron Jackson Co.....			13,168.50		13,168.50		13,168.50	
Canadian Pacific R. R. Co.....	16,257.50		27,932.50		27,932.50		36,155.00	
Continental Oil Co.....	1,842.50		26,262.50		26,262.50		26,262.50	
Call loans.....			100,000.00		151,000.00		171,000.00	
Electric Bond & Share Co.....	4,937.50		5,935.00		5,935.00		5,935.00	
Economy Lumber Co.....					152.43			
General Electric Co.....					6,525.00		13,520.00	
Gulf Oil Co.....	3,307.50		6,277.50		6,277.50		6,277.50	
Great Northern R. R. Co.....	23,362.50		61,732.50		61,732.50		61,732.50	
Great Northern Iron Properties					3,925.00		3,675.00	
International Harvester Co.....	3,832.50		3,832.50		3,832.50		8,767.50	
The National Cash Register Co.	9,752.50		24,572.50		24,572.50		24,572.50	
Northern Pacific R. R. Co.....	4,952.50		12,807.50		15,343.65		15,343.65	
New York Central R. R. Co.....	27,495.00		49,965.00		49,965.00		57,510.00	
The Ohio Oil Co.....	3,650.00		10,610.00		10,610.00		10,610.00	
The Pennsylvania Railroad Co....	9,250.00		13,877.50		13,877.50		18,537.50	
Royal Dutch Co.....	2,722.50		14,175.00		14,175.00		14,175.00	
(Forward)	\$1,014,180.66	\$2,516,227.00	\$ 950,613.51	\$2,522,374.43	\$ 919,512.67	\$2,541,671.51	\$1,031,122.42	\$2,580,578.93



PETITIONER'S EXHIBIT 18

(Continued)

Wilson Bros. and Co.

GENERAL LEDGER TRIAL BALANCES

(After Closing)

	January 1, 1932		December 31, 1932		December 31, 1933		December 31, 1934	
	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.
(Forwarded)	\$1,014,180.66	\$2,516,227.00	\$ 950,613.51	\$2,522,374.43	\$ 919,512.67	\$2,541,671.51	\$1,031,122.42	\$2,580,578.93
Standard Oil Co. of Indiana.....	8,850.00		8,850.00		8,850.00		8,850.00	
Standard Oil Co. of Kentucky.....	9,872.50		18,495.00		19,493.40		19,493.40	
Socony Vacuum Oil Co.....	1,977.50		1,977.50		1,977.50		1,977.50	
Swift & Co.....					6,670.00		6,670.00	
Sears, Roebuck & Co.....					4,302.50		4,302.50	
Standard Oil Co. of Calif.....	24,905.00		29,855.00		29,855.00		29,855.00	
Southern Pacific R. R. Co.....	44,342.50		58,502.50		58,502.50		63,480.00	
Simmons Company.....	3,655.00		3,655.00		3,655.00		3,655.00	
Shell Union Oil Co.....	9,242.50		14,642.50		14,642.50		14,642.50	
Transamerica Corp.....	139,595.00		139,595.00		139,595.00		139,595.00	
The Texas Corporation.....	12,165.00		23,340.00		23,340.00		23,340.00	
Underwood Elliott Fisher Co.....	10,862.50		12,380.00		12,380.00		12,380.00	
U. S. Steel Corp.....					9,140.00		26,785.00	
Union Oil Associates.....	3,197.50		3,197.50		3,197.50		3,197.50	
United Fruit Co.....			7,470.00					
Union Oil Co.....	15,642.50		23,515.00		23,515.00		23,515.00	
Weeden & Co.....	100,000.00		100,000.00		100,000.00		100,000.00	
Westinghouse Electric Co.....							5,690.00	
Bills receivable.....			14,000.00					
Associated Lumber Co.....							969.42	
Angelus Lumber Co.....	90.00		531.34					
Columbia Studio, Inc.....							800.79	
Ellis Bros. Lumber Co.....	761.35		331.35					
Exposition Lumber Co.....					107.50		142.50	
Dolan Wrecking & Constr. Co.....	684.30		664.12					
Fox Film Corp.....							8,918.43	
General Mill & Lumber Co.....	82.80		82.80					
Gorden Mill & Supply Co.....	547.92		349.36					
Glick Bros. Sash & Door.....	447.76							
Giles Lumber Co.....			40.42					
Hayman Bldg. Supply Co.....			25.00					
Phil Hart Lumber Co.....	1,128.04		1,128.04					
Herzog Lumber & Door Co.....	591.61				3,800.90		734.69	
Hubner Lumber Co.....			137.73		140.00			
Hudson-Bowney Lumber Co.....							134.81	
T. P. Hogan Co.....	100.00		100.00					
Huff Lumber Co.....					687.50			
Imperial Lumber Co.....	271.16		216.50		1,501.89		1,005.69	
(Forward)	\$1,403,193.10	\$2,516,227.00	\$1,413,695.17	\$2,522,374.43	\$1,384,866.36	\$2,541,671.51	\$1,531,257.15	\$2,580,578.93



PETITIONER'S EXHIBIT 18

(Continued)

Wilson Bros. and Co.

GENERAL LEDGER TRIAL BALANCES

(After Closing)

	January 1, 1932		December 31, 1932		December 31, 1933		December 31, 1934	
	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.
(Forwarded)	\$1,403,193.10	\$2,516,227.00	\$1,413,695.17	\$2,522,374.43	\$1,384,866.36	\$2,541,671.51	\$1,531,257.15	\$2,580,578.93
Johnson Lumber Co.....					402.50			
Lucas Manufacturing Co.....	800.00		800.00					
Murphy Lumber Co.....							632.26	
Pico Lumber Co.....							2,672.07	
Paramount Productions.....							804.23	
Read-Pratt Co.....	899.41		899.41					
E. M. Strawn Lumber Co.....							227.41	
Southwestern Lumber Co.....	310.39		242.21				185.78	
R. K. O. Studios, Inc.....							215.03	
Karl Rohberg.....			500.00		500.00		500.00	
Peninsula Lumber Co.....	195.00		182.87					
Valley Salvage Co.....							162.89	
Ventura Wrecking Co.....	721.23		721.23					
H. A. Van Der Top.....						28.24		
Woodhead Lumber Co.—Calif....	47,036.19		44,368.96		43,276.06		37,145.76	
Woodhead Lumber Co.—Nevada			11,594.97		33,422.98		32,494.49	
W. Wilson	17,717.88		17,717.88		16,917.88		16,917.88	
F. A. Wilson.....		15,000.00			28,091.96		35,612.50	
Mrs. H. Wilson.....	17,132.40	1,000.00	21,248.51		21,128.51		21,128.51	
Warner Bros.....							2,395.34	
Stanger Lumber Co.....	159.22							
Mel Coe Lumber Co.....	350.00		114.36					
Inglewood Lumber Co.....	365.32							
Hyman Bldg. Co.....	25.00							
J. R. Duffield & Co.....	75.00							
	\$1,488,980.14	\$2,532,227.00	\$1,512,085.57	\$2,522,374.43	\$1,528,634.49	\$2,541,671.51	\$1,682,351.30	\$2,580,578.93

PETITIONER'S EXHIBIT 19

Wilson Bros. and Co.

ACCOUNTS RECEIVABLE

January 1, 1932

Angelus Lumber Co.....	\$ 90.00
Ellis Bros. Lumber Co.....	761.35
Dolan Wrecking and Construction Co.....	684.30
General Mill and Lumber Co.....	82.80
Garden Mill and Supply Co.....	547.92
Glick Bros. Sash and Door Co.....	447.76
Phil Hart Lumber Co.....	1,128.04
Herzog Lumber and Door Co.....	591.61
T. P. Hogan Co.....	100.00
Imperial Lumber Co.....	271.16
Lucas Manufacturing Co.....	800.00
Read-Pratt Co.....	899.41
Southwestern Lumber Co.....	310.39
Peninsula Lumber Co.....	195.00
Ventura Wrecking Co.....	721.23
Woodhead Lumber Co.....	47,036.19
Stangor Lumber Co.....	159.22
Mel Coe Lumber Co.....	350.00
Inglewood Lumber Co.....	365.32
Hyman Bldg. Co.....	25.00
J. R. Duffield & Co.....	75.00
Atlantic Lumber Co.....	45.00
Fisher Co.....	35.00
E. F. Hutton Co.....	5,173.99
S. S. Svea.....	6,420.36
	<hr/>
	\$67,316.05
	<hr/> <hr/>

[151]

PETITIONER'S EXHIBIT 20

Wilson Bros. and Co.

ACCOUNTS RECEIVABLE

December 31, 1932

Atlantic Lumber Co.....	\$ 462.13
Angelus Lumber Co.....	531.34
Ellis Bros. Lumber Co.....	331.35
Dolan Wrecking and Construction Co.....	664.12
General Mill and Lumber Co.....	82.80
Garden Mill and Supply Co.....	349.36
Giles Lumber Co.....	40.42
Hayman Building Supply Co.....	25.00
Phil Hart Lumber Co.....	1,128.04
Hubner Lumber Co.....	137.73
T. P. Hogan Co.....	100.00
Imperial Lumber Co.....	216.50
Lucas Manufacturing Co.....	800.00
Read-Pratt Co.	899.41
Southwestern Lumber Co.....	242.21
Karl Rohberg	500.00
J. C. Smith Lumber Co.....	87.89
Peninsula Lumber Co.....	182.87
Mel Coe Lumber Co.....	114.36
Ventura Lumber Co.....	721.23
Woodhead Lumber Co. of California.....	44,368.96
Woodhead Lumber Co. of Nevada.....	11,594.97
S. S. Svea.....	9,081.78
	<hr/>
	\$72,662.47

[152]

PETITIONER'S EXHIBIT 21

Wilson Bros. and Co.

ACCOUNTS RECEIVABLE

December 31, 1933

Advance Lumber Co.....	\$ 100.00
Economy Lumber Co.....	152.43
Exposition Lumber Co.....	107.50
Herzog Lumber and Door Co.....	3,800.90
Hubner Lumber Co.....	140.00
Huff Lumber Co.....	687.50
Imperial Lumber Co.....	1,501.89
Johnson Lumber Co.....	402.50
Karl Rohberg.....	500.00
H. A. Van der Top.....	28.24
Woodhead Lumber Co. of California.....	43,276.06
Woodhead Lumber Co. of Nevada.....	33,422.98
S. S. Svea.....	10,804.01
	<hr/>
	\$94,924.01

[153]

PETITIONER'S EXHIBIT 22

Wilson Bros. and Co.

ACCOUNTS RECEIVABLE

December 31, 1934

Associated Lumber Co.....	\$ 969.42
Columbia Studio, Inc.....	800.79
Exposition Lumber Co.....	142.50
Fox Film Corp.....	8,918.43
Herzog Lumber and Door Co.....	734.69
Hudson-Bowney Lumber Co.....	134.81
Imperial Lumber Co.....	1,005.69
Murphy Lumber Co.....	632.26
Pico Lumber Co.....	2,672.07
Paramount Productions	804.23
E. M. Strawn Lumber Co.....	227.41

Southwestern Lumber Co.....	185.78
R. K. O. Studios, Inc.....	215.03
Karl Rohberg	500.00
Valley Salvage Co.....	162.89
Woodhead Lumber Co. of California.....	37,145.76
Woodhead Lumber Co. of Nevada.....	32,494.49
S. S. Svea.....	12,861.01
Warner Bros.	2,395.34

\$103,002.60

[154]

PETITIONER'S EXHIBIT 23

Wilson Bros. and Co.

ACCOUNTS RECEIVABLE—F. A. WILSON

Charges—1933:

April 26—Proceeds sale of Great Northern Pfd. and other shares.....	\$17,112.50	
May 31—Profit on General Electric Company shares traded.....	437.00	
31—Proceeds sale of Simmons Co., and other shares	28,516.25	
June 20—Proceeds sale of General Electric Co., shares	2,471.00	
July 30—Proceeds sale of United Fruit Co. shs.	19,185.75	
1—Proceeds sale of General Electric Co. shares	3,377.37	
20—Proceeds sale of A. T. & S. F. Ry. shs.	608.50	
24—Proceeds sale of International Harvester Co. shares.....	10,113.00	
Nov. 8—Profit on U. S. Steel Corp. traded.....	776.40	\$ 82,597.77

Credits—1933:

July 24—Borrowing tax on United Fruit Co. shares	8.40	
Oct. 14—Deposit Wells Fargo Bank account of Wilson Bros. and Co.....	15,000.00	
Oct. 20—.....	3,925.00	
Sept. 27—Purchase Swift and Co.....	6,670.00	
Dec. 30—Purchase of U. S. Steel Corp. shs.....	13,760.00	39,363.40

Due from F. A. Wilson December 31, 1933..... \$ 43,234.37

Charges—1934:

Jan. 29—Proceeds sale of U. S. Steel Corp. shares	17,454.60	
Sept. 15—.....	100.00	
Oct. 15—.....	30.00	
Oct. 23—.....	60.00	
Nov. 27—Cash paid by Wilson Bros. and Co.....	4,607.50	
Nov. 9—Cash paid by Wilson Bros. and Co.....	2,581.03	
Dec. 22—Cash paid by Wilson Bros. and Co.....	19,368.75	
Dec. 14—Cash paid by Wilson Bros. and Co.....	17,997.50	62,199.38

\$105,433.75

Credits—1934:

July 26—Purchase U. S. Steel Corp. shs.....	\$55,940.00	
Oct. 30—Purchase U. S. Steel Corp. shs.....	6,340.00	
Nov. 5—Purchase Canadian Pac. Rd. shs.....	1,180.00	
Nov. 21—Purchase Canadian Pac. Rd. Shs.....	4,607.50	
Dec. 20—Purchase Southern Pac. Co. shs.....	1,742.50	
Dec. 30—Shipping charges on shares.....	11.25	69,821.25

Due from F. A. Wilson December 31, 1934..... \$ 35,612.50

Credits—1935:

Jan. 2—Purchase of Kennecott Copper Co. and other shares.....		35,612.50
--	--	-----------

Form 1120
 TREASURY DEPARTMENT
 INTERNAL REVENUE SERVICE
 (Individual's Return)

CORPORATION INCOME TAX RETURN
For Calendar Year 1929

File This Return with the Collector of Internal Revenue for Your State or on or before March 15, 1930

Page 1 of Balance

No. 781
 Date 661838
 Serial Number
 (Individual's Name)

FIRST CLASSY CORPORATION, NAME AND BUSINESS ADDRESS

Wilson Bros. & Co.
1312 Russ Building,
San Francisco, California.
 (Post office and State)

Check Check U.S. Gov. of Ind. Page Payment

Date of Incorporation December 14, 1926.

Under the Laws of what State or Country NEVADA

1-2-30
 2-21-30

Kind of Business _____ In This a Consolidated Return of Two or More Corporations?

GROSS INCOME				
1. Gross Sales from Trading or Manufacturing, Less Returns and Allowances		353 835	46	
2. Less Cost of Goods Sold:				
(a) Inventory at beginning of year	\$			
(b) Merchandise bought for sale		349 215 83		
(c) Cost of manufacturing or producing goods (From Schedule A)				
(d) Total of lines (a), (b), and (c)	\$	349 215 83		
(e) Less inventory at end of year		43 240 00	306 075	83
3. Gross Profit from Trading or Manufacturing (Item 1 minus Item 2)		47 757	63	
4. Gross Profit from Operations Other Than Trading or Manufacturing (State name of business):				
(a) <u>Management</u>		2 865	61	
(b)				
(c)				
5. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds		6 445	02	
6. Rents		1 060	00	
7. Royalties				
8. Profit from Sale of Real Estate, Stocks, Bonds, and other Capital Assets (From Schedule B)				
9. Dividends on Stock of Domestic Corporations		12 159	00	
10. Other Income (including dividends received on stock of foreign corporations). (State name of business):				
(a)				
(b)				
(c)				
11. Total Income in Items 3 to 10				70 297 46

DEDUCTIONS				
12. Compensation of Officers (From Schedule C)				
13. Rent on Business Property			2 280	
14. Repairs (From Schedule D)				
15. Interest				
16. Taxes (From Schedule E)			292 22	
17. Losses (From Schedule F)				
18. Bad Debts (From Schedule G)				
19. Dividends (From Schedule H)			12 159	
20. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I)			19 498 75	
21. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Substantiate, see Instruction 21)				
22. Other Deductions Not Reported Above. (Explain below, or on separate sheet): <u>Steamer Operation</u>		11 761	51	
(a) Salaries and wages. (Not included in Item 3, 12, or 14 above)			14 580 00	
(b) Net Loss for prior year (Substantiate): <u>Miscellaneous Expense</u>			9 649 46	
(c)				
(d)				
(e)				
(f)				
23. TOTAL DEDUCTIONS IN ITEMS 12 TO 22				70 240 74
24. Net Income (Item 11 minus Item 23)				56 72

COMPUTATION OF TAX			
25. Net Income (Item 24 above)	\$		
26. Less Credit of \$1,000 (for a domestic corporation having a net income of less than \$25,000)			
27. Balance (Item 25 minus Item 26)	\$		
28. Less: Income Tax Paid at Source. (This credit can only be allowed to a nonresident foreign corporation)			
29. Income Tax Paid to a Foreign Country or U. S. possession by a domestic corporation (see Inst. 27)			
30. Balance of Tax (Item 27 minus Items 28 and 29)	\$		
31. Income Tax (12% of Item 27)	\$		
32. If net income of domestic corporation is less than \$25,000, enter the amount over \$25,000			
33. Total Tax (Item 30 plus Item 31)	\$		

a-1

Page 2 of Return

SCHEDULE L - BALANCE SHEETS (See Instruction 6)

Name	BUSINESS OF TAXABLE YEAR		END OF TAXABLE YEAR	
	Amount	Total	Amount	Total
ASSETS				
1. Cash		\$ 200,000.00		\$ 181,178.45
2. Notes receivable				4,785.02
3. Accounts receivable			\$ 81,268.44	81,268.45
Less reserve for bad debts				
4. Inventories:				
Raw materials	\$		\$	
Work in process	\$		\$	
Finished goods			43,140	
Supplies				
				43,140 ✓
5. Investments (nontaxable):				
Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	\$		\$	
Securities issued under the Federal Farm Loan Act, or under such Act as amended	\$		\$	
Obligations of the United States or its possessions	\$		\$	
6. Other investments:				
Stocks of domestic corporations	\$ 466,000		\$ 486,000	
Bonds of domestic corporations				
Stocks and bonds of foreign corporations				
All other investments or loans	175,000	641,000 ✓	157,500	643,500
7. Deferred charges:				
Prepaid insurance	\$		\$	
Prepaid taxes				
All other				
8. Capital assets:				
Land		30,000		30,000
Buildings	\$ 20,000		\$ 20,000	
Machinery and equipment			5,000	
Furniture and fixtures	5,000		5,000	
Delivery equipment				
	\$ 25,000		\$ 30,000 ✓	
Less reserves for depreciation		25,000 ✓	1,500	28,500 ✓
9. Patents				
10. Good will				
11. Other assets (describe fully):	\$		\$	
12. TOTAL ASSETS		\$ 896,000		\$ 965,056.92 ✓
LIABILITIES				
13. Notes payable (less than one year)		\$ 200,000		\$ 200,000
14. Accounts payable				4,841.19
15. Bonds and notes (not secured by mortgage)				
16. Mortgages (including bonds and notes so secured)				
17. Accrued expenses:				
Interest	\$		\$	
Taxes				
All other				
18. Other liabilities (describe fully):				
19. Capital stock:				
Preferred stock (less stock in treasury)	\$		\$	
Common stock (less stock in treasury)		896,000	746,000	746,000 ✓
20. Surplus	\$		\$	
21. Undivided profits				18,218.82
22. TOTAL LIABILITIES		\$ 896,000		\$ 965,056.92 ✓
Remarks				

0-10

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

Table with multiple columns and rows for reconciling net income and analyzing changes in surplus. Includes sections for 'Sustainable Income', 'Changes against reserve for bad debts', 'Total from Line 1 to 4, inclusive', 'Net profit for year', 'Surplus and undivided profits', and 'Other credits to surplus'. Total values are shown in the rightmost column, such as 54,780 and 12,215.72.

QUESTIONS

KIND OF BUSINESS

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special description of the business sufficient to give the information called for under each general class. A.—Agriculture and related industries, including fishing, logging, ice harvesting, etc. B.—Mining and quarrying, including gas and oil wells, and also the leasing of such property. C.—Manufacturing, etc. D.—Construction, etc. E.—Transportation, etc. F.—Trading in goods bought and not produced by the trading concern. G.—Service—domestic, etc. H.—Finance, including banking, real estate, insurance. I.—Concern not falling in above classes (a) because of combining several of them with no predominant business, or (b) for other reasons. J.—Concern whose business involves activity falling in two or more of the above general classes, where the main product is concerned, should report business in A or B which also transport and market their own product exclusively or mainly, should still be identified with classes A or B; concerns in C (manufacturing) which own or control their source of material supply in A or B and which also transport, sell, or install their own product exclusively or mainly, should be identified with manufacturing; concerns in D may control or own the source of supply of materials used exclusively or mainly in their constructive work; concerns in E or F may own or control the source of their material or power; concerns in F may transport or store their own merchandise, but its production would identify them with A, B, or C.

Lumber and Shipping

AFFILIATIONS WITH OTHER CORPORATIONS

4. Is this a consolidated return of two or more corporations? No. If so, procure from the Collector of Internal Revenue for your district Form 444, Affiliations Schedule, which shall be filled in, overtopped, and filed as a part of this return. See Article 12 (c) and (d), Regulations 78. 5. Did the corporation file a consolidated return for the preceding taxable year? No.

PREDCESSOR BUSINESS

6. Did the corporation file a return under the same name for the preceding taxable year? No. Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? If answer is "yes," give name and address of each predecessor business, and the date of the change in entity. Upon such change were any asset values increased or decreased? If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

BASES OF RETURN

7. Is this return made on the basis of actual receipts and disbursements? Yes. If not, describe fully what other basis or method was used in computing net income.

VALUATION OF INVENTORIES

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock. Cost

LIST OF ATTACHED SCHEDULES

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

The corporation's books are in care of 1512 Russ Building, San Francisco, Cal.

Schedule A—Cost of Manufacturing or Producing Goods

[Not filled in]

Schedule B

Profit from Sale of Real Estate, Stocks, Bonds, etc.

[Not filled in]

Schedule C—Compensation of Officers

[Not filled in]

Schedule D—Cost of Repairs

[Not filled in]

Schedule E—Taxes Paid

[Not filled in]

Schedule F—Explanation of Losses by Fire, Storm, etc.

[Not filled in]

Schedule G—Bad Debts

[Not filled in]

Schedule H—Dividends Deductible

[Not filled in]

Schedule I—Explanation of Deduction for Depreciation

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquisition	5. Cost or Value as of March 1, 1913, Whichever Greater (Exclusive of Land)	Amount of Depreciation Charged Off	
					6. Previous Year	7. This year
Wooden Building	Jan. 2, 1929			\$ 20000	\$	\$ 1000
“ Steamers	“	10 years	10 years	175000		17500
Automobile	May 1930	New		5498.75		498.75
Furniture	Jan. 2, 1929		10 years	5000		500
						[In pencil] 19498.75

Affidavit

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

[Corporate

Seal]

T. A. WILSON

President

W. T. WILSON

Treasurer.

Sworn to and subscribed before me this 15th day of March, 1930.

[Notarial Seal] JOHN J. MAY, DO

Attach a separate sheet if any of the above schedules do not provide sufficient space.

[Endorsed]: Respondent's Exhibit A. Admitted in evidence June 7, 1939. [159]

EXHIBIT "B"

RESPONDENT'S EXHIBIT "B"

0-11

Form 1199
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Individual's Return

Page 1 of Return

CORPORATION INCOME TAX RETURN
For Calendar Year 1930

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1931

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

Trans Bldg
San Francisco
Post Office and Street

Date of Incorporation *Jan 14 1928*

Under the Laws of what State or Country *Nevada*

Kind of Business *Lumber & Shipping* Is This a Consolidated Return of Two or More Corporations? *No.* If so, How Many?

GROSS INCOME		
1. Gross Sales from Trading or Manufacturing, \$	Less Returns and Allowances, \$	Net Sales \$ <i>139,961.4</i>
2. Less Cost of Goods Sold		
(a) Inventory at beginning of year		<i>43,400</i>
(b) Merchandise bought for sale		<i>122,671.42</i>
(c) Cost of manufacturing or producing goods from materials	Other	
Salaries and Wages, \$	Costs, \$	Total
(d) Total of lines (a), (b), and (c)		<i>165,811.42</i>
(e) Less inventory at end of year		<i>38,529.42</i>
3. Gross Profit from Trading or Manufacturing (Item 1 minus Item 2)		<i>127,282.00</i>
4. Gross Profit from Operations Other Than Trading or Manufacturing (State nature of operation)		<i>11,917.14</i>
(a) <i>Management Salaries</i>		<i>9,973.33</i>
(b)		<i>7,833.83</i>
(c)		<i>1,180.00</i>
5. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds		
6. Rents		
7. Royalties		
8. Profit from Sale of Real Estate, Stocks, Bonds, and other Capital Assets (From Schedule B)		
9. Dividends on Stock of Domestic Corporations		<i>17,130.55</i>
10. Other Income (including dividends received on Stock of foreign corporations) (State nature of income)		
(a)		
(b)		
(c)		
11. Total Income in Items 3 to 10		<i>389,785.1</i>

DEDUCTIONS		
12. Compensation of Officers (From Schedule C)		
13. Rent on Business Property		<i>2,374.00</i>
14. Repairs (From Schedules D, E, Salaries and Wages, I, and Other Costs, \$) ; Total		
15. Interest		
16. Taxes (From Schedule E)		<i>1,074.36</i>
17. Losses (From Schedule F) <i>Steam Operated</i>		<i>3,953.60</i>
18. Bad Debts (From Schedule G)		
19. Dividends (From Schedule H)		<i>17,130.55</i>
20. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I)		<i>20,450.50</i>
21. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Schedule K)		
22. Other Deductions Not Reported Above (Explain below or on separate sheet) <i>Personal Expense</i>		<i>5,349.52</i>
(a) Salaries and wages (Not included in Item 12, or 14 above)		<i>11,460.00</i>
(b) Net Loss for 1928-1929 (Schedule K)		
(c)		
(d)		
(e)		
23. Total Deductions in Items 12 to 22		<i>61,872.53</i>
24. Net Income (Item 11 minus Item 23)		<i>327,912.57</i>

COMPUTATION OF TAX

25. Net Income (Item 24 above)	\$	26. Income Tax (12% of Item 27)	\$
26. Less Credit of \$3,000 (for a domestic corporation having a net income of less than \$25,000)	\$	29. If net income of domestic corporation is less than \$25,000, enter the amount over \$25,000	\$
27. Balance (Item 25 minus Item 26)	\$	30. Total Tax (Item 28 plus Item 29)	\$
31. Less: Income Tax Paid at Source. (This credit can only be allowed to a nonresident (foreign corporation).)	\$		
32. Income Tax Paid to a Foreign Country or U. S. possession by a domestic corporation (see Inst. 27)	\$		
33. Balance of Tax (Item 30 minus Items 31 and 32)	\$		

6-11

Page 2 of Return

SCHEDULE B - BALANCE SHEETS (See Instructions 63)

Item	Beginning of Reporting Year		End of Reporting Year	
	Amount	Quantity	Amount	Total
ASSETS				
1 Cash			121,173.43	56,593.57
2 Notes receivable			45,850.21	
3 Accounts receivable	81,958.46		200,623.99	200,623.99
Less reserve for bad debts				
4 Inventories				
Raw materials				
Work in process				
Finished goods	43,140		385,294.21	
Supplies				
		43,140		385,294.21
5 Investments in real estate (Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; Securities issued under the Federal Farm Loan Act or under such Act as amended; Obligations of the United States or its territories)				
6 Other investments:				
Stocks of domestic corporations	486,000		504,525.00	
Bonds of domestic corporations			11,975.00	
Stocks and bonds of foreign corporations				
All other investments of loans	157,500	643,500	140,000.00	656,570.00
7 Deferred charges:				
Prepaid insurance				
Prepaid taxes				
All other				
8 Capital assets:				
Land		30,000		30,000
Buildings	20,000		20,000	
Machinery and equipment	6,000		7,750.50	
Furniture and fixtures	5,000		5,000	
Delivery equipment				
	30,000		32,750.50	
Less reserves for depreciation	1,500	28,500	44,500.00	28,300
9 Patents				
10 Good will				
11 Other assets (describe fully)				
12 Total Assets			963,056.91	1,010,616.99
LIABILITIES				
13 Notes payable (less than one year)			200,000	200,000
14 Accounts payable			4,841.19	4,165.40
15 Bonds and notes (not secured by mortgage)				
16 Mortgages (including bonds and notes so secured)				
17 Accrued expenses:				
Interest				
Taxes				
All other				
18 Other liabilities (describe fully)				
19 Capital stock:				
Preferred stock (less stock in treasury)				
Common stock (less stock in treasury)	746,000	746,000	746,000	800,000 +
20 Surplus				
21 Undivided profits			12,257.21	6,451.59
22 Total Liabilities			963,056.91	1,010,616.99
Remarks				

0-11

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

1. Net income from Form 10, page 1 of the return	6,200	22,894.68	Unallowable deductions:	
2. Non-taxable income:			(a) Dividends, premiums, and annuities	
(a) Income on obligations of a State, Territory, or city political subdivision thereof, or the District of Columbia			(b) Income and profits from the sale of U.S. Government bonds, and so much of such items paid to its possessor or former owner to set against a profit to Form 10, page 1 of the return	
(c) Income on securities issued under the Federal Farm Loan Act, or under such Act as amended			(c) Federal taxes paid on the tax-exempt bonds	
(d) Income on obligations of the United States or its possessions			(d) Special improvement taxes levied to increase the value of the property owned	
(e) Dividends distributable under Section 803(a) of the Revenue Act of 1918		17,730.55	(e) Premiums and bonuses, additions, or distributions required to equalize the books	
(f) Proceeds of life insurance contracts paid upon the death of insured			(f) Replacements and renewals	
(g) Other items of non-taxable income (to be detailed):			(g) Insurance premiums paid on the life of any officer or employee when the corporation is directly or indirectly a beneficiary	
(1) _____			(h) Income on individuals incurred or assumed to produce or carry obligations or securities the interest upon which is wholly exempt from taxation	
(2) _____			(i) Additions to reserves for bad debts which are not included to Form 10, page 1 of return	
(3) _____			(j) Additions to reserves for contingencies, etc. (to be detailed):	
3. Charges against reserve for bad debts of high-risk class of return, in net an addition to a debit			(1) _____	
4. Charges against reserve for bad debts of high-risk class of return, (to be detailed):			(2) _____	
(a) _____			(3) _____	
(b) _____			(4) Other nonallowable deductions (to be detailed):	
(c) _____			(1) _____	
(d) _____			(2) _____	
5. Total of Lines 1 to 4, inclusive		5,764.13	(3) _____	
6. Net income for the taxable year, as shown by books, before any adjustments are made (Schedule L, Line 5 minus Line 5)			(4) _____	
7. Additions and undistributed profits or losses by balance sheet at close of preceding taxable year		12,245.72	11. Total of Line 12	
Other credits to surplus (to be detailed):			12. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property):	
(a) _____			(a) Date paid _____ Character _____	
(b) _____			(b) Date paid _____ Character _____	
(c) _____			(c) Date paid _____ Character _____	
(d) _____			(d) Date paid _____ Character _____	
10. Total of Lines 7 to 9, inclusive			13. Other debits to surplus (to be detailed):	
11. Total from Line 10			(a) _____	
12. Surplus and undistributed profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)		6,454.59	(b) _____	
			(c) _____	
			14. Total of Lines 13 and 14	

QUESTIONS

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special description of the business sufficient to give the information called for under each general class.

- A.—Agriculture and related industries, including fishing, logging, bee harvesting, etc., and also the leasing of such property.
- B.—Mining and quarrying, including gas and oil wells, and also the leasing of such property. State the product or products.
- C.—Manufacturing. State the product and also the material if not produced by the trading concern.
- D.—Construction—excavations, buildings, bridges, railroads, ships, etc., also equipping and installing same with systems, devices, or machinery, without their manufacture. State nature of structures built, materials used, or kind of installations.
- E1.—Transportation—rail, water, local, etc. State the kind and special product transported, if any.
- E2.—Public utilities—gas (natural, coal, or water); electric light or power (hydro or steam generated); heating (steam or hot water); telephone; waterworks or power.
- E3.—Storage—without trading or profit from sales—(elevators, warehouses, stockyards, etc.). State product stored.
- F.—Trading in goods bought and not produced by the trading concern. State manner of trade, whether wholesale, retail, or commission, and product handled. Sales with storage with profit primarily from sales.
- G.—Service—domestic, including hotels, restaurants, etc.; amusements; other professional, personal, or technical service. State the service.
- H.—Finance, including banking, real estate, insurance.
- I.—Concerns not falling in above classes (a) because of combining several of them with no predominant business, or (b) for other reasons.

2. Concerns whose business involves activity falling in two or more of the above general classes, where the same product is concerned, should report business as identified with but one of the above general classes; for example, concerns in A or B which also transport and market their own product exclusively or mainly, should still be identified with classes A or B; concerns in C (manufacturing) which own or control their source of material supply in A or B and which also transport, sell, or install their own product exclusively or mainly, should be identified with manufacturing; concerns in D may control or own the source of supply of materials used exclusively or mainly in their constructive work; concerns in E1 or E2 may own or control the source of their material or power; concerns in F may transport or store their own merchandise, but its production would identify them with A, B, or C.

3. Answers: (a) General class (use key letter designation) F (b) Main income-producing business (give specifically the information called for under each key letter; also whether acting as principal, or as agent or commission; state if inactive or in liquidation)

AFFILIATIONS WITH OTHER CORPORATIONS

4. Is this a consolidated return of two or more corporations? No. If so, procure from the Collector of Internal Revenue Form 881, Affiliations Schedule, which shall be filled in, errors to be corrected as per Article 12 (a) and (d), Regulations 78.

5. Did the corporation file a consolidated return for the preceding taxable year?

PREDECESSOR BUSINESS

6. Did the corporation file a return under the same name for the preceding taxable year? No. Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? If answer is "yes," give name and address of each predecessor business, and the date of the change in entity.

Upon such change were any asset values increased or decreased? If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

BASIS OF RETURN

7. Is this return made on the basis of actual receipts and disbursements? If not, describe fully what other basis or method was used in computing net income.

VALUATION OF INVENTORIES

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock.

LIST OF ATTACHED SCHEDULES

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

The corporation's books are in care of Located at [Signature]

183

0-11

Page 4 of Return **SCHEDULE A—COST OF MANUFACTURING OR PRODUCING GOODS** (See Instruction 9)

Item	Amount	Item	Amount
Salaries and wages			
Material and supplies			

SCHEDULE B—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Date of Payment	2. Date Acquired	3. Amount Received	4. Depreciation Allowable (See Instructions 10 and 11)	5. Cost or Value of Stock or Bond (Exclusive of Loan)	6. Dividend or Interest	7. Net Profit (Enter on Item 8)

State how property was acquired.

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 12)

1. Name of Officer	2. Official Title	3. Total Amount of Payments	4. Balance of Items Overdue		5. Amount of Compensation (Enter on Item 13)
			4. Current	4. Past Due	

SCHEDULE D—COST OF REPAIRS (See Instruction 14)

SCHEDULE E—TAXES PAID (See Instruction 16)

1. Item	2. Amount (Enter on Item 14)	1. Item	2. Amount (Enter on Item 16)
Salaries and wages			

SCHEDULE F—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 17)

1. Date of Payment	2. Date Acquired	3. Cost or Value of Stock or Bond (Exclusive of Loan)	4. Dividend or Interest	5. Depreciation Allowable (See Instructions 10 and 11)	6. Net Profit (Enter on Item 8)

State how property was acquired.

SCHEDULE G—BAD DEBTS (See Instruction 15)

SCHEDULE H—DIVIDENDS DEDUCTIBLE (See Instruction 18)

1. Year	2. Name of Debtor	3. Bad Debt	1. Name of Corporation	2. Amount of Dividend	
				2. Dividend	3. Purport
1926					
1927					
1928					
1929					
1930					

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 20)

1. Date of Payment of building, lease material of which constructed	2. Date Acquired	3. Life Used (Years)	4. Periodic Loss After Amortization	5. Cost or Value of Building (Exclusive of Loan)	6. Amount of Depreciation Claimed On	
					6. Previous year	7. This year
Wooden Bldg	Jan - 1911	20 years	20 years	2,200.00	1,500	1,000
Hardware	-	10 years	10 -	175.00	175.00	175.00
Furniture	-	10 -	10 -	500.00	500	500
Auto	1929	new		5,475.00	475.00	1,000
-	1930	-		2,200.00		4,500

AFFIDAVIT

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each depose and say that this return, including the accompanying schedules and statements, has been examined by them and by the best of his knowledge, belief, and information, a true and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1929 and the Regulations thereunder.

Sworn to and subscribed before me this 16 day of March, 1930.

W. J. Wilson President
F. J. Wilson Treasurer
 Attach a separate sheet if any of the above schedules do not provide sufficient space.

RESPONDENT'S EXHIBIT "C"

0-12 11-27

Form 1120
TREASURY DEPARTMENT
Internal Revenue Service
(Individual's Return)

CORPORATION INCOME TAX RETURN
For Calendar Year 1931

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1932

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

WILSON BROS. & CO.
1512 Pass Building 235 Montgomery St.
San Francisco, California

Date of Incorporation December 14, 1928

Under the Laws of what State or Country Nevada

No. 781
854923
1-Conf
Cash Check M.O. Cert. of Ind. Pmt Payment

REVIEWED
SECTION E

Kind of Business Wholesale - all commodities in This a Consolidated Return of Two or More Corporations? If so, How Many?

Table with columns for Gross Income items (1-8) and their corresponding amounts. Includes items like Gross Sales from Trading, Less Cost of Goods Sold, and Gross Profit from Operations.

Table for Other Income (9-11) including interest on bank deposits, bonds, and dividends received from foreign corporations.

Table for Deductions (12-24) including compensation of officers, rent on business property, repairs, interest, taxes, and depreciation.

Table for Computation of Tax (25-28) showing net income, income tax at 15%, and total tax.

C
6
69
50

C-1

6-12

Page 2 of Returns

SCHEDULE L—BALANCE SHEETS (See Instructions 6)

Item	Balance at Previous Year		End of Current Year	
	Amount	Total	Amount	Total
ASSETS				
1. Cash		26,522.56		1,442,272.24
2. Notes receivable				
3. Accounts receivable	208,422.99		100,044.88	
Less reserve for bad debts		200,422.97		108,144.88
4. Inventories:				
Raw materials				
Work in process				
Finished goods	26,522.42		20,742.38	
Supplies				
		26,522.42		20,742.38
5. Investments (noncallable):				
Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia				
Securities issued under the Federal Farm Loan Act, or under such Act as amended				
Obligations of the United States or its possessions				
6. Other investments:				
Stocks of domestic corporations	204,522.00		744,872	
Bonds of domestic corporations	11,272.00		2,272	
Stocks and bonds of foreign corporations				
All other investments or interests	140,000.00	145,872.00	151,280	728,272
7. Deferred charges:				
Prepaid insurance				
Prepaid taxes				
All other				
8. Capital assets:				
Land		20,000		20,000
Buildings	20,000		20,000	
Machinery and equipment	7,720.26		7,720.26	
Furniture and fixtures	2,000		2,000	
Delivery equipment				
	29,720.26		29,720.26	
Less reserves for depreciation	4,420.26	25,300.00	4,420.26	25,300
9. Patents				
10. Good will				
11. Other assets (describe fully):				
TOTAL ASSETS		1,010,434.97		2,722,201.72
LIABILITIES				
12. Notes payable (less than one year)		200,000		200,000
13. Accounts payable		4,342.42		19,222.11
14. Bonds and notes (not secured by mortgage)				
15. Mortgages (including bonds and notes as secured)				
16. Accrued expenses:				
Interest				
Taxes				
All other				
17. Other liabilities (describe fully):				
18. Capital stock:				
Preferred stock (less stock in treasury)				
Common stock (less stock in treasury)		200,000		2,222,222
19. Surplus				
20. Undistributed profits		4,422.55		12,722.44
TOTAL LIABILITIES		1,010,434.97		2,722,201.72

Remarks:

C-12

106

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

1. Total income from Item 8, page 1 of return.	\$ 506 00
2. Deductible losses:	
(a) Interest on obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia.	
(b) Interest on securities issued under the National Farm Loan Act, or under such Act as amended.	
(c) Interest on obligations of the United States as guaranteed.	
(d) Dividends distributable under Section 802 of the Revenue Act of 1918.	18 644 00
(e) Payments of life insurance premiums paid upon the death of the insured.	
(f) Other items of deductible losses (to be detailed):	
(1) _____	
(2) _____	
(3) _____	
3. Changes against surplus for bad debts, if Item 21, page 1 of return, is not an addition to a reserve.	
4. Changes against surplus for contingencies, etc. (to be detailed):	
(a) _____	
(b) _____	
(c) _____	
5. Total of Items 1 to 4, inclusive.	\$ 524 64
6. Total from Item 21.	
7. The profit for year, exclusive by loans, before any adjustments made therein (also before Item 6).	
8. Capital and undivided profits as shown by balance sheet at close of preceding taxable year.	\$ 453 85
9. Other credits to surplus (to be detailed):	
(a) _____	
(b) _____	
(c) _____	
10. Total of Items 7 to 9, inclusive.	
11. Total from Item 8.	
12. Capital and undivided profits exclusive by balance sheet at close of preceding year (also before Item 10).	18 739 64

13. Deductible deductions:	
(a) Dividends, payments, and contributions.	
(b) Interest and profits items paid to the United States, and to each of such items paid to its possessions or foreign countries to be deducted as a credit in Item 8, page 1 of the return.	
(c) Paid-up items paid on tax-free investment bonds.	
(d) Special improvement loans tending to increase the value of the property owned.	
(e) Premiums and losses, additions, or betterments treated or expensed on the books.	
(f) Repayments and refunds.	
(g) Insurance premiums paid on the life of any officer or employee when the corporation is directly or indirectly a beneficiary.	
(h) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation.	
(i) Additions to surplus for bad debts which are not included in Item 21, page 1 of return.	
(j) Additions to reserve for contingencies, etc. (to be detailed):	
(1) _____	
(2) _____	
(3) _____	
14. Other nondeductible deductions (to be detailed):	
(a) _____	
(b) _____	
(c) _____	
(d) _____	
15. Total of Items 13.	
16. Dividends paid during the taxable year (name whether paid to each stock of the corporation, or other property):	
(a) Date paid. Character.	
(b) Date paid. Character.	
(c) Date paid. Character.	
(d) Date paid. Character.	
17. Other debts to surplus (to be detailed):	
(a) _____	
(b) _____	
(c) _____	
18. Total of Items 15 and 17.	

QUESTIONS

KIND OF BUSINESS

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special designation of the business conducted to give the information called for under each general class.

A—Agriculture and related industries, including fishing, logging, ice harvesting, etc., and also the handling of such property. State the product or products.

B—Mining and quarrying, including gas and oil wells, and also the handling of such property. State the product or products.

C—Manufacturing. State the product and also the material if not implied by the name of the product.

D—Construction—concessions, buildings, bridges, railroads, ships, etc., also equipping and installing same with systems, devices, or machinery, without their maintenance. State nature of structures built, materials used, or kind of installation.

E—Transportation—rail, water, land, etc. State the kind and special product transported, if any.

F—Public utilities—gas (natural, coal, or water); electric light or power (hydro or steam generated); heating (steam or hot water); telephones; waterworks or power.

G—Storage—without trading or profit from sales—druggists, warehouse, stockyards, etc.). State product stored.

H—Less—transportation or utilities. State kind of property, including.

I—Trading in goods bought and not produced by the trading concern. State manner of trade, whether wholesale, retail, or commission, and product handled. State with stamps with profit primarily from sales.

J—Service—domestic, including hotels, restaurants, etc.; amusements; other professional, personal, or technical services. State the service.

K—Finance, including banking, real estate, insurance.

L—Concerns not falling in above classes (a) because of containing several of them with no predominant business, or (b) for other reasons.

2. Concerns whose business involves activity falling in two or more of the above general classes, where the name product is concerned, should report business as identified with but one of the above general classes; for example, concerns in A or B which also transport and market their own product exclusively or mainly, should still be identified with classes A or B; concerns in C (manufacturing) which own or control their source of material supply in A or B and which also transport, sell, or handle their own product exclusively or mainly, should be identified with manufacturing; concerns in D may control or own the source of supply of materials used exclusively or mainly in their constructive work; concerns in E or F may own or control the source of their material or power; concerns in F may transport or store their own merchandise, but its production would identify them with A, B, or C.

3. Answer:

(a) General class (see key letter designation) F

(b) Main income-producing business (give specifically the information called for under each key letter, also whether acting as principal, or as agent or commission; state if inactive or in liquidation)

PREDECESSOR BUSINESS

4. Did the corporation file a return under the main name for the preceding taxable year? Yes. Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year after December 31, 1917? Yes. If answer is "yes," give name and address of each predecessor business, and the date of the change in entity.

Upon such change were any asset values increased or decreased? Yes. If the answer is "yes," attach balance sheets of old business and opening balance sheets of new business must be furnished.

BASES OF RETURN

5. In this return made on the basis of actual receipts and disbursements? Yes. If not, describe fully what other basis or method was used in computing net income.

VALUATION OF INVENTORIES

6. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock.

COSE

LIST OF ATTACHED SCHEDULES

7. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

AFFILIATIONS WITH OTHER CORPORATIONS

8. Is this a consolidated return of two or more corporations? Yes. If so, procure from the Collector of Internal Revenue for your district Form 961, Affiliations Schedule, which shall be filed in, etc. As, and filed as a part of this return, the Article 13 (a) and (c), Regulations 73.

9. Did the corporation file a consolidated return for the preceding taxable year?

The corporation's books are in care of _____
 Located at 1312 Ross Building, San Francisco.

C-3

In the United States Circuit Court of Appeals
for the Ninth Circuit

B. T. A. Docket No. 83397

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.), a corporation,
Petitioner on Review,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

B. T. A. Docket No. 93668

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.), a corporation,
Petitioner on Review,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

ORDER FOR CONSOLIDATION OF THE
RECORD

Upon consideration of the motion filed herein by counsel for the petitioner on review in the above-entitled proceedings, moving the Court to consolidate said proceedings for purposes of record, briefing, hearing and decision, and for other purposes, it is this 10th day of March, 1941.

Ordered that the said motion be and it is hereby granted.

And It Is Further Ordered that a certified copy of [168] the motion and this order be transmitted by the Clerk of this Court to the Clerk of the United States Board of Tax Appeals.

(s) CURTIS D. WILBUR
U. S. Circuit Judge.

A true copy.

Attest: March 10, 1941.

[Seal] PAUL P. O'BRIEN,
Clerk.

By FRANK A. SCHMID,
Deputy Clerk.

[Endorsed]: Filed March 10, 1941. Paul P. O'Brien, Clerk.

[Endorsed]: U. S. B. T. A. Filed March 14, 1941.

[169]

[Title of Board and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

In compliance with the provisions of paragraph (a) of Rule 75 of the Rules of Civil Procedure for the District Courts of the United States as made applicable to review of a decision of the United States Board of Tax Appeals by Rule 30 of the Rules of the United States Circuit Court of Ap-

peals for the Ninth Circuit, the above-named petitioner hereby designates the portions of the record, proceedings, and evidence to be contained in the record on review of the above-entitled proceedings, as follows:

1. Docket entries of the proceedings before the Board of Tax Appeals.
2. Motion for order and order granting leave to file amended petition.
3. Amended petition filed July 10, 1939.
4. Answer to amended petition filed July 31, 1939.
5. Stipulation of facts filed in the proceeding, excepting there- [170] from copies of bills of sale of enrolled vessels attached thereto and referred to as Exhibits A and B to said stipulation.
6. Finding of Fact and Memorandum Opinion of the Board promulgated May 22, 1940.
7. Decision of the Board of Tax Appeals entered August 6, 1940.
8. Petition for Review of Decision of the Board by the United States Circuit Court of Appeals for the Ninth Circuit, filed October 31, 1940.
9. Notice of filing of petition for review and admission of service thereof.
10. Orders enlarging time for preparation, transmission and delivery of the record [not included in record].
11. Revised Statement of the Evidence.
12. Designation of contents of record on appeal.
13. Statement of Points on which petitioner intends to rely.

14. Petitioner's Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11, 18, 19, 20, 21, 22 and 23 and Respondent's Exhibits A, B and C.

15. Order of the United States Circuit Court of Appeals, Ninth Circuit, for consolidation of the record.

ADOLPHUS E. GRAUPNER

LOUIS JANIN

Counsel for Petitioner,
1110 Balfour Building,
San Francisco, California.

Service of the foregoing designation of the contents of the record on appeal is hereby admitted and agreed to this 11th day of March, 1941.

J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent on Review.

[Endorsed]: U. S. B. T. A. Filed March 11, 1941.

[171]

[Title of Board and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 171, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above num-

bered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 20th day of March, 1941.

B. D. GAMBLE,

Clerk, United States Board of
Tax Appeals. [172]

[Endorsed]: No. 9781. United States Circuit Court of Appeals for the Ninth Circuit. Wilson Brothers and Company, (Wilson Bros. & Co.,) a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed March 31, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 9781 B. T. A.

Docket No. 83397

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.), a corporation,
Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

NOTICE OF ADOPTION OF DESIGNATION
OF CONTENTS OF RECORD AND STATE-
MENT OF POINTS FILED WITH THE
BOARD OF TAX APPEALS.

To the Honorable Justices of the United States
Circuit Court of Appeals for the Ninth Circuit:

Notice is hereby given that the Petitioner on Re-
view in the above entitled proceedings hereby adopts
for the purposes of petition on review to the above
entitled court, the Designation of Contents of
Record and Statement of Points filed with the Clerk
of the United States Board of Tax Appeals in the
above numbered proceedings on March 11, 1941.

Dated this 16th day of April, 1941.

ADOLPHUS E. GRAUPNER

LOUIS JANIN

Attorneys for the Above
Named Petitioner.

[Endorsed]: Filed April 17, 1941. Paul P.
O'Brien, Clerk. [173]

No. 9782

United States
Circuit Court of Appeals

For the Ninth Circuit.

WILSON BROTHERS AND COMPANY, (Wilson Bros. & Co.,) a corporation,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the United States
Board of Tax Appeals.

APPEARANCES:

For Taxpayer:

A. E. GRAUPNER.

For Comm'r:

T. M. MATHER,
ALVA C. BAIRD.

Docket No. 83397

WILSON BROTHERS AND COMPANY,
(WILSON BROS. AND COMPANY,
a Corporation),

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1936

Mar. 25—Petition received and filed. Taxpayer notified. (Fee paid).

Mar. 25—Copy of petition served on General Counsel.

Apr. 30—Answer filed by General Counsel.

May 5—Copy of answer served on taxpayer.

1937

May 1—Hearing set week of July 6, 1937, San Francisco, Calif.

May 20—Motion for a continuance filed by General Counsel. Granted.

1939

Mar. 25—Hearing set May 29, 1939 in San Francisco, California.

June 6-7—Called 5/29/39. Hearing had before Mr. Disney on merits. Submitted. Motion to consolidated Dockets 83397 and 93668 granted. Stipulation as to the facts filed. Briefs due Aug. 1, 1939, Reply 9/1/39.

June 24—Transcript of hearing of June 6, 1939, filed.

June 24—Transcript of hearing of June 7, 1939, filed.

July 5—Motion for leave to file amended petition filed by taxpayer. Amended petition lodged. 7/10/39 granted. 7/11/39 copy served on General Counsel.

July 28—Brief filed by taxpayer. 8/2/39 copy served on General Counsel.

July 31—Answer to amended petition filed by General Counsel.

Aug. 1—Brief filed by General Counsel.

Aug. 3—Copy of answer to amended petition served on taxpayer.

Aug. 29—Reply brief filed by taxpayer.

1940

May 22—Memorandum opinion rendered, Richard L. Disney, Div. 4. Decision will be entered under Rule 50.

June 17—Motion for review by the entire Board or for reconsideration filed by taxpayer.

June 20—Computation of deficiency filed by General Counsel.

1940

June 28—Order denying petitioner's motion for reconsideration, entered.

July 2—Order denying review by the Board, entered. [1*]

1940

July 9—Hearing set July 31, 1940 on settlement.

July 22—Consent to settlement filed by taxpayer.

Aug. 6—Decision entered, R. L. Disney, Div. 4.

Oct. 31—Petition for review by United States Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.

Oct. 31—Affidavit of service filed by taxpayer.

Nov. 1—Proof of service of petition for review filed.

Dec. 30—Certified copy of an order from 9th Circuit extending time to 2/3/41 to complete and transmit record, filed.

1941

Jan. 8—Statement of evidence filed by taxpayer.

Feb. 3—Certified copy of order from the 9th Circuit enlarging the time to 4/3/41 within which to prepare, transmit and file record, filed.

Mar. 11—Agreed revised statement of evidence filed.

Mar. 11—Statement of points on which petitioner intends to rely filed, with proof of service thereon.

*Page numbering appearing at foot of page of original certified Transcript of Record.

Mar. 11—Agreed designation of contents of record filed, with proof of service thereon.

Mar. 14—Certified copy of order from the 9th Circuit, consolidating 83397 and 93668, filed.

[2]

United States Board of Tax Appeals
Docket No. 83397

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.), a corporation,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MOTION FOR ORDER GRANTING LEAVE TO
FILE AMENDED PETITION.

Now comes the petitioner above-named by its counsel, Adolphus E. Graupner and Louis D. Janin, and moves this Honorable Board to grant petitioner leave to file an amended petition in the above-entitled proceeding, which said amended petition is presented herewith for consideration on this motion.

The foregoing motion is made in order to have the pleadings accord with the proofs submitted at the hearing of this proceeding in San Francisco,

California, on June 6th and 7th, 1939, and to comply with the provisions of Rule 6(e) of this Board.

Dated, July 1, 1939.

Respectfully submitted,

ADOLPHUS E. GRAUPNER,

LOUIS D. JANIN,

Counsel for Petitioner.

Granted July 10, 1939.

(Signed) R. L. DISNEY,

Member U. S. Board of Tax Appeals.

[Endorsed]: U. S. B. T. A. Filed July 5, 1939.

[3]

[Title of Board and Cause.]

AMENDED PETITION

Upon consent of the above-entitled Board to amend the petition in the above-entitled proceeding to conform to the proofs submitted at the hearing thereof and without waiver of right to challenge the constitutionality of any part of any Revenue Act involved in this proceeding or any act of the Commissioner of Internal Revenue or his subordinate, or to object to the jurisdiction of this Board, the above named petitioner hereby petitions for a re-determination of the alleged deficiency set forth by the Commissioner of Internal Revenue in his purported notice of deficiency (IT:E:Aj-RLT-25579-90D) dated December 30, 1935, and as a basis of this proceeding alleges as follows:

1. The petitioner is a corporation duly organized and existing under the laws of the State of Nevada, with its principal office at 1112 Russ Building in the City and County of [4] San Francisco, State of California.

2. The purported notice of deficiency upon which this petition is based (a copy of which is hereunto attached and marked Exhibit "A") was apparently mailed to the petitioner on December 30, 1935.

3. The asserted deficiency in tax here in controversy is for alleged income taxes for the calendar years 1932 and 1933 and, as asserted in said purported deficiency notice, in the amount of not more than \$11,343.36 for the year 1932 and in the amount of not more than \$22,078.01 for the year 1933, or for not more than the sum of \$33,421.37 for the said two years.

4. The alleged determination or proposal of a deficiency in tax set forth in said purported notice of deficiency is erroneous in each and every of the following particulars assigned as errors:

(a) The Commissioner erred in proposing, determining and asserting against petitioner any amount as a deficiency in income tax for either of the calendar taxable years 1932 and 1933.

(b) The Commissioner erred in holding that petitioner was availed of for the purpose of preventing the imposition of surtax or any internal revenue tax upon its shareholders for either or both of the taxable years herein involved, or that petitioner is liable for any additional tax or tax penalty for per-

mitting its gains and profits to accumulate instead of being divided or distributed to its shareholders, or that it in anyway violated, or is subject to taxation or penalty under, the provisions of section 104 of the Revenue Act of 1932 for the years [5] 1932 and 1933.

(c) The Commissioner erred in disallowing the amount of \$5,225.02 as depreciation claimed by petitioner as a deduction for the taxable calendar year 1932, and in not allowing at least \$2,326.08 depreciation in addition to that claimed on the return for said year.

(d) The Commissioner erred in disallowing the amount of \$13,975.02 as depreciation claimed by petitioner as a deduction for the taxable calendar year 1933.

(e) The Commissioner erred in disallowing the amount of \$4,547.05 claimed by petitioner as a deductible loss on steamship operation for the taxable year 1932.

(f) The Commissioner erred in disallowing the amount of \$4,412.26 claimed by petitioner as a deductible loss on steamship operation for the taxable year 1933.

(g) The Commissioner erred in failing to determine the proper adjusted basis for depreciation as of December 31, 1931, on the steamships "Idaho" and "Oregon" and on the furniture and fixtures belonging to petitioner and in using an erroneous alleged "cost" as such basis.

(h) The Commissioner erred in adding to petitioner's income, as returned by it for the taxable year 1932, the amount of \$5,442.32 as taxable income received by way of interest from bank deposits.

(i) The Commissioner erred in adding to petitioner's income, as returned by it for the taxable year 1933, the amount of \$445.18 as taxable income received by way of interest from [6] bank deposits.

(j) The Commissioner erred in adding to petitioner's income, as returned by it for the taxable year 1933, the amount of \$2,160.80 by disallowance thereof as deduction for bad debts.

(k) The Commissioner erred in adding to petitioner's income, as returned by it for the taxable year 1932, the amount of \$18,258.00 representing dividends received by it from domestic corporations subject to tax.

(l) The Commissioner erred in adding to petitioner's income, as returned by it for the taxable year 1933, the amount of \$17,541.00 representing dividends received by it from domestic corporations subject to tax.

(m) The Commissioner erred in adding to the tax returned by petitioner for the taxable year 1932 and the erroneous and illegal computation of an alleged deficiency made by him of the amount of \$567.17 as a penalty pretended to be imposed for negligence as defined by section 293(a) of the Revenue Act of 1932.

(n) The Commissioner erred in adding to the

tax returned by petitioner for the taxable year 1933 and the erroneous and illegal computation of an alleged deficiency made by him of the amount of \$1,103.90 as a penalty pretended to be imposed for negligence as defined by section 293(a) of the Revenue Act of 1932.

(o) The Commissioner erred in attempting to compute any deficiency in income tax against petitioner for either or both of the taxable years 1932 and/or 1933, and particularly in attempting to compute any deficiency in income tax against petitioner [7] for either or both of said years under the provisions of section 104 of the Revenue Act of 1932.

5. The facts upon which petitioner relies as a basis for this proceeding are as follows:

(a) Petitioner is a corporation duly organized on December 14, 1928, under the laws of the State of Nevada. Its correct name and title is "Wilson Bros. & Co." instead of "Wilson Brothers and Company" as stated in the Notice of deficiency. Its sole stockholders are Francis A. Wilson and Winfred T. Wilson.

(b) Petitioner was formed to take over the business of a copartnership of the same name and to acquire, own and operate timberlands, saw mills, logging railroads and equipment, and steamships; also, to buy, sell and transport lumber, to own, operate and maintain steamships and to utilize the same for the transport of cargoes.

(c) During said taxable years petitioner kept and maintained its books of account on the accrual basis.

(d) On or about March 31, 1933, petitioner filed its income tax return for the taxable year 1932 in which it reported no taxable income for said year. Said return stated specifically the items of petitioner's gross income, the deductions and credits claimed by it.

(e) On or about March 15, 1934, petitioner filed its income tax return for the taxable year 1933 in which it reported no taxable income for said year. Said return stated specifically the items of petitioner's gross income, the deductions and credits claimed by it. [8]

(f) The Commissioner has erroneously and illegally proposed and determined a deficiency in income tax against petitioner for the taxable year 1932 in the amount of \$477.61, an additional tax for said year in the amount of \$10,865.75 by erroneously and illegally applying the terms of section 104(a) to the income of petitioner, and a penalty of five percentum on the sum of the above mentioned amounts by illegally applying section 293(a) of the Revenue Act of 1932 to the return filed by petitioner as aforesaid, or a total of deficiency and penalty of \$11,910.53.

(g) The Commissioner has erroneously and illegally proposed and determined a deficiency in income tax against petitioner for the taxable year 1933 in the amount of \$2,870.25, an additional tax for said year in the amount of \$19,207.76 by erroneously applying the terms of section 104(a) to the

income of petitioner, and a penalty of five percentum on the sum of the above mentioned amounts by illegally applying section 292(a) of the Revenue Act of 1932 to the return filed by petitioner as aforesaid, or a total deficiency and penalty of \$23,-181.91.

(h) Respondent added to the amount of total income reported by petitioner in its income tax returns for the respective years 1932 and 1933, under designation in the deficiency notice for said years as "Excessive depreciation", the following amounts:

For the year 1932	\$ 5,225.02,
For the year 1933	13,975.02

Petitioner has claimed as deductible depreciation in its return for said years the following and only the following items and amounts with respect to assets used in the trade or business, viz: [9]

Depreciable Items	1932	1933
Wooden Buildings	\$ 1,000.00	\$ 1,000.00
Steamships "Idaho" and "Oregon".....	8,750.00	17,500.00
Furniture and Fixtures.....	500.00	500.00
Automobiles	900.00	1,649.85
Or a total of.....	\$11,150.00	\$20,649.85

Respondents disallowance of items of deduction in the deficiency notice in this proceeding has not been itemized or specifically explained therein or in his answer to the original petition on file herein or by proofs at hearing of this proceeding.

(i) Petitioner has stipulated to the disallowance of depreciation claimed on wooden buildings in the

total amount claimed for each of the years 1932 and 1933. Petitioner has also stipulated that the allowable depreciation on automobiles for each of the two years involved is \$900.00 for the year 1932 and \$1,-649.85 for the year 1933.

(j) The basis to petitioner for depreciation of its 75% interest in the steamship "Idaho", without allowance for depreciation in prior years, was on December 31, 1931, at least \$200,216.67; the depreciation claimed and allowed by respondent to said date was \$108,750.00, as has been stipulated; the petitioner's depreciable basis on said steamship as adjusted for depreciation allowed and allowable for years prior to December 31, 1931, was at least \$91,466.67.

(k) As determined in said deficiency notice said steamship "Idaho" had a useful depreciable life of not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date; and petitioner [10] is and was entitled to an annual depreciation allowance of not less than \$6,097.11 for said period.

(l) The basis to petitioner for depreciation on its 100% interest in the steamship "Oregon", without allowance for depreciation in prior years, was on December 31, 1931, at least \$205,766.32; the depreciation claimed and allowed by respondent to said date was \$109,231.69, as has been stipulated; the petitioner's depreciable basis on said steamship as of December 31, 1931, as adjusted for depreciation al-

lowed and allowable for prior years was at least \$96,434.63.

(m) As determined in said deficiency notice said steamship "Oregon" had a useful depreciable life not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date, and petitioner is and was entitled to an annual depreciation allowance of not less than \$6,437.64 for said period.

(n) On January 2, 1929, petitioner acquired furniture and fixtures of a fair market value of \$5,000.00, on which respondent has determined a useful depreciable life of ten years from December 31, 1931. Respondent has allowed \$1,500.00 depreciation on said furniture and fixtures to December 31, 1931, and determined a rate of depreciation of 10% on the remaining ten years of life thereof. Petitioner is therefore entitled to allowance for depreciation on said furniture and fixtures in an amount not less than \$350.00 per annum for each of the taxable years 1932 and 1933.

(o) During the taxable years 1932 and 1933 petitioner was required to protect, maintain and keep in repair the steam- [11] ships "Idaho" and "Oregon" in order to keep such vessels in seaworthy condition and prevent their undue deterioration and depreciation. For such purpose petitioner expended the amount of \$4,547.05 during the taxable year 1932 and the amount of \$4,412.26 during the taxable year 1933. Such expenditures were proper and necessary business expenses and petitioner is entitled to de-

duct said amounts for the respective years despite the disallowance of the same by the respondent.

(p) During the years 1932 and 1933 and prior thereto, petitioner was the managing agent for the steamship "Svea" and as such was required to protect, maintain and keep said vessel in repair. Petitioner was not an owner of any interest in said steamship but as agent was required to perform the services mentioned. Due to said steamship being laid up and making no earnings from which petitioner might reimburse itself and the refusal of the owners to contribute to such expense, petitioner in the year 1933 wrote-off the amount of \$2,160.80 as a partial write-off of a bad debt. Said write-off was made after attempts to collect the same from the shareowners of said steamship and advice of counsel that petitioner had no right of recovery and the determination by petitioner that said amount was beyond hope of recovery.

(q) Petitioner is therefore entitled to deduct from its gross income for the years 1932 and 1933 as reported in its income tax returns for the respective years the following statutory deductible items: [12]

<u>Deductions</u>	<u>1932</u>	<u>1933</u>
Rent, as accepted by respondent.....	\$ 1,415.50	\$ 1,140.00
Taxes, as accepted by respondent.....	752.39	1,284.18
Steamship operations (maintenance).....	4,547.05	4,412.26
Dividends, as accepted by respondent	18,258.00	17,541.00
Depreciation—Steamship “Idaho”		
75% interest	6,097.77	6,097.77
Steamship “Oregon”		
100% interest	6,437.64	6,437.64
Automobiles, as		
accepted	900.00	1,649.85
Furniture and fixtures..	350.00	350.00
Bad debts, as accepted by respondent		19,223.24
Deduction for partial write-off of ad- vancements steamship “Svea”.....		2,160.80
Salaries and wages, as accepted by respondent	5,780.00	5,785.00
General expense, as accepted by re- spondent	2,403.52	3,501.70
	<u>\$46,941.67</u>	<u>\$69,583.44</u>

(r) During the years 1932 and 1933 petitioner in its income tax returns reported for said years respectively the amounts of \$12,949.58 and \$9,035.81 as income from interest. Respondent without explanation in his deficiency notice or affirmative pleading in his answer in this proceeding asserted interest on bank deposits to be taxable in the amount of \$5,442.32 for the year 1932 and \$445.18 for the year 1933 and in his deficiency notice added said amounts to petitioner’s income for the said respective years, although petitioner had reported as taxable income from interest on bank deposits amounts in excess of said addition, and although no

amounts of interest in addition to [13] that reported were paid to or accruable to petitioner for said years or either of them.

(s) Petitioner's gross income was correctly reported in its income tax returns for the years 1932 and 1933 as follows:

	<u>1932</u>	<u>1933</u>
Gross income returned.....	\$ 32,565.57	\$75,579.28
From which should be deducted at least	46,941.87	69,583.44
Resulting in net taxable income of (\$-14,476.30)	<u><u> </u></u>	<u><u> </u></u>
		\$ 5,995.84

(t) Petitioner was not formed or availed of for the purpose of preventing the imposition of any surtax or internal revenue tax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.

(u) During the years 1932 and 1933 the economic and financial depression which started in 1929 continued and the impaired and shrunken market value of the assets of petitioner made it inadvisable under sound business practice to declare any dividends or in any other way further impair the assets of the corporation and thus endanger the accomplishment of the business purposes for which petitioner was organized.

(v) Under the facts of this proceeding petitioner is not liable for surtax under section 104 of the Revenue Act of 1932 as amended in any amount upon any possible fair adjustment of its net income

for the taxable calendar years 1932 and 1933. [14]

(w) Under the facts of this proceeding petitioner is not liable for the penalty of five percent sought to be imposed by respondent under the alleged authority of section 293(a) of the Revenue Act of 1932, because the deficiency notice and the testimony adduced shows no negligence, or intentional disregard of rules and regulations, and respondent failed to offer any proof in support of his attempt to impose such a penalty.

Wherefore, the petitioner prays that this Board may hear the proceeding and grant to petitioner such relief from the deficiency, additional tax and penalty asserted by the Commissioner as may be within the jurisdiction of the Board.

ADOLPHUS E. GRAUPNER
LOUIS JANIN

Attorneys for Petitioner,
1110 Balfour Building,
San Francisco, California.

[15]

State of California,
City and County of San Francisco—ss.

Francis A. Wilson, being duly sworn, says that he is the president of the above named incorporated petitioner and that he is authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon infor-

mation and belief, and those facts he believes to be true.

FRANCIS A. WILSON

Subscribed and sworn to before me this 30th day of June, 1939.

HAZEL E. THOMPSON

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires September 21, 1942. [16]

EXHIBIT "A"

Office of

Commissioner of Internal Revenue

TREASURY DEPARTMENT

Washington

Dec. 30, 1935

Wilson Brothers and Company,
1112 Russ Building,
San Francisco, California.

Sirs:

You are advised that the determination of your income tax liability for the years 1932 and 1933, discloses a deficiency of \$35,092.44, tax and penalty as shown in the statement attached.

In accordance with section 272(a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a

redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By W. T. SHERWOOD

Acting Deputy Commissioner.

Enclosures:

Statement

Form 870

Schedule A [17]

STATEMENT

In re: Wilson Brothers and Company,

1112 Russ Building,

San Francisco, California.

Year	Tax Liability	Tax Assessed	Deficiency	5% Penalty
(Consent on 1932 to 12/30/35)				
1932	\$11,343.36	None	\$11,343.36	\$ 567.17
1933	22,078.01	None	22,078.01	1,103.90
Totals	\$33,421.37	None	\$33,421.37	\$1,671.07
Total deficiencies and penalties.....				\$35,092.44

The report of the internal revenue agent in charge at San Francisco, California has been reviewed and is approved by this office.

After careful consideration of your Federal income tax returns and of all other available information the Bureau holds that your corporation is subject to taxation under the provisions of section 104 of the Revenue Act of 1932 for the years 1932 and 1933.

1932

Net loss reported on return.....		\$11,740.89
Add:		
1. Excessive depreciation	\$5,225.02	
2. Loss on steamship operation.....	4,547.05	
3. Interest	5,442.32	15,214.39
		<hr/>
Net income adjusted, section 21.....		\$ 3,473.50
Add:		
Dividends received		18,258.00
		<hr/>
Net income adjusted, section 104(c).....		\$21,731.50
		[18]

EXPLANATION OF ADJUSTMENTS

1. The excessive depreciation has been disallowed in accordance with section 23(k) of the Revenue Act of 1932 and Treasury Decision 4422. The computation of the depreciation allowable is shown in schedule A attached.

2. The loss on steamship operation has been disallowed for the reason no evidence has been submitted to substantiate the loss as a deduction allowable under the provisions of section 23 of the Revenue Act of 1932.

3. Interest on bank deposits constitutes taxable income in accordance with section 22 of the Revenue Act of 1932.

COMPUTATION OF TAX

Net income, section 21.....	\$ 3,473.50
Tax liability at 13 3/4%, section 13(a).....	\$ 477.61
Net income, section 104(c).....	21,731.50
Tax liability at 50%, section 104(a).....	10,865.75
	<hr/>
Total tax liability.....	\$11,343.36
Tax assessed	None
	<hr/>
Deficiency	\$11,343.36
5% penalty	567.17
	<hr/>
Total deficiency and penalty.....	\$11,910.53

1933

Net loss reported on return.....	\$ 118.75
Add:	
1. Excessive depreciation	13,975.02
2. Reserve for bad debts.....	2,160.80
3. Loss on steamship operation.....	4,412.26
4. Interest	445.18
	<hr/>
Net income adjusted, section 21.....	\$20,874.51
	[19]
Brought forward	\$20,874.51
Add:	
Dividends	17,541.00
	<hr/>
Net income adjusted, section 104(c).....	\$38,415.51

EXPLANATION OF ADJUSTMENTS

1. See #1 under 1932.
2. The reserve for bad debts has been disallowed in accordance with section 23(j) of the Revenue Act of 1932, since your basis as established

is the actual bad debt basis and no permission has been granted by the Commissioner to change to the reserve basis.

3. See #2 under 1932.
4. See #3 under 1932.

COMPUTATION OF TAX

Net income, section 21.....	\$20,874.51
Tax liability at 13¾%, section 13(a).....	\$ 2,870.25
Net income, sections 104(c).....	38,415.51
Tax liability at 50%, section 104(a).....	19,207.76
Total tax liability	\$22,078.01
Tax assessed	None
Deficiency	\$22,078.01
5% penalty	1,103.90
Total deficiency and penalty.....	\$23,181.91
	[20]

The understatement of tax for the years 1932 and 1933 is attributable to negligence as defined in the regulations and under the provisions of section 293(a) of the Revenue Act of 1932 and a penalty of 5% of each deficiency attaches. The 5% penalty is included in the above assessments.

The interest due on the deficiencies in accordance with the provisions of section 292 of the Revenue Act of 1932 will be computed by this office and demanded by the collector of internal revenue at the time you are called upon to pay the tax.

Payment should not be made until a bill is received from the collector of internal revenue for your district and remittance should then be made to him.

[21]

WILSON BROTHERS AND COMPANY

Kind of Property	Date Built	Cost	Interest Owned by Wilsons	Interest	Depreciation Deducted to Dec. 31, 1928	Date Acquired by Taxpayer	Cost	Depreciation Deducted to Dec. 31, 1931	Residual Cost Jan. 1, 1932	Rate From Jan. 1, 1932	Depreciation 1932	Allowable 1933
S. S. Idaho.....	1916	\$200,000.00	75%	\$150,000.00	\$90,000.00	January 2, 1929	\$60,000.00	\$18,750.00	\$41,250.00	6 $\frac{2}{3}$ %	\$2,750.00	\$2,750.00
S. S. Oregon.....	1916	140,386.15	100%	140,386.15	84,231.69	January 2, 1929	56,154.48	25,000.00	31,154.46	6 $\frac{2}{3}$ %	2,076.96	2,076.96
Wooden building.....	1916	7,500.00			4,875.00	January 2, 1929	2,625.00	3,000.00	None		None	None
Furniture and fixtures.....						January 3, 1929	3,480.20	1,500.00	1,980.20	10 %	198.02	198.02
Automobiles.....						1932			8,249.25	5 %	900.00	1,649.85
Total.....											\$5,924.98	\$6,674.83

[Endorsed] : U.S.B.T.A. Lodged July 5, 1939. Filed July 10, 1939.

[Title of Board and Cause.]

ANSWER TO AMENDED PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition.

2. Admits the allegations of fact contained in paragraph 2 of the amended petition.

3. Admits that the deficiency in tax here in controversy is for taxes for the calendar years 1932 and 1933 as asserted in the deficiency notice, as alleged in paragraph 3 of the amended petition, but denies the remaining allegations contained in said paragraph. [23]

4. (a) to (c), inclusive. Denies the Commissioner erred in the determination of the deficiency as alleged in subparagraphs (a) to (c), inclusive, of paragraph 4 of the amended petition.

5. (a) Admits the allegations contained in subparagraph (a) of paragraph 5 of the amended petition.

(b) Denies the allegations contained in subparagraph (b) of paragraph 5 of the amended petition.

(c) Admits the allegations contained in sub-

paragraph (c) of paragraph 5 of the amended petition.

(d) Admits on or about March 31, 1933, petitioner filed its income tax return for the taxable year 1932 in which it reported no taxable income for said year as alleged in subparagraph (d) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(e) Admits on or about March 15, 1934, petitioner filed its income tax return for the taxable year 1933 in which it reported no taxable income for said year, as alleged in subparagraph (e) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(f) Denies the allegations contained in subparagraph (f) of paragraph 5 of the amended petition.

(g) Denies the allegations contained in subparagraph (g) of paragraph 5 of the amended petition.

(h) Admits respondent added to the amount of income reported by the petitioner for the year 1932 \$5,225.02 and for the year 1933 [24] \$13,975.02 as excessive depreciation, as alleged in subparagraph (h) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(i) Admits the allegations contained in sub-

paragraph (i) of paragraph 5 of the amended petition.

(j) Admits the depreciation allowed by respondent was \$108,750.00 as stipulated, as alleged in subparagraph (j) of Paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(k) Admits, as determined in said deficiency notice said steamship "Idaho" had a useful depreciable life of not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date, as alleged in subparagraph (k) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(l) Admits the depreciation allowed by respondent was \$109,231.69 as stipulated, as alleged in subparagraph (l) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(m) Admits, as determined in said deficiency notice said steamship "Oregon" had a useful depreciable life not in excess of fifteen years from January 1, 1932, and an annual rate of depreciation of $6\frac{2}{3}$ per cent from said date, as alleged in subparagraph (m) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph. [25]

(n) Denies the allegations contained in subparagraph (n) of paragraph 5 of the amended petition.

(o) Denies the allegations contained in sub-

paragraph (o) of paragraph 5 of the amended petition.

(p) Denies the allegations contained in subparagraph (p) of paragraph 5 of the amended petition.

(q) Denies the allegations contained in subparagraph (q) of paragraph 5 of the amended petition.

(r) Admits during the years 1932 and 1933 petitioner in its income tax returns reported for said years respectively the amounts of \$12,949.58 and \$9,035.81 as income from interest, as alleged in subparagraph (r) of paragraph 5 of the amended petition, but denies the remaining allegations contained in said subparagraph.

(s) Denies the allegations contained in subparagraph (s) of paragraph 5 of the amended petition.

(t) Denies the allegations contained in subparagraph (t) of paragraph 5 of the amended petition.

(u) Denies the allegations contained in subparagraph (u) of paragraph 5 of the amended petition.

(v) Denies the allegations contained in subparagraph (v) of paragraph 5 of the amended petition.

(w) Denies the allegations contained in subparagraph (w) of paragraph 5 of the amended petition. [26]

6. Denies generally and specifically each and every allegation in the amended petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and that the petitioner's appeal be denied.

[Signed] J. P. WENCHEL

TMM

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

T. M. MATHER

Special Attorneys,

Bureau of Internal Revenue.

TMM:emb 7-22-39

[Endorsed]: U.S.B.T.A. Filed July 31, 1939.

[27]

United States Board of Tax Appeals
Washington

Docket No. 83397.

WILSON BROTHERS & CO.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Pursuant to the Memorandum Opinion of the Board entered May 22, 1940, the respondent herein having on June 20, 1940, filed a recomputation of

the tax, and the petitioner having on July 22, 1940, filed an acquiescence in said recomputation, now, therefore, it is

Ordered and Decided: That there are deficiencies in normal taxes, surtaxes, and penalties as follows:

Year	Normal Tax	Additional Tax under section 104, 1932 Act	Penalty
1932	None	\$ 3,316.84	\$165.84
1933	\$1,499.93	14,224.80	786.24

Enter:

[Seal] (Signed) R. L. DISNEY
Member. [28]

Entered Aug. 6, 1940.

[Title of Board and Cause.]

PETITION FOR REVIEW OF DECISION OF
THE UNITED STATES BOARD OF TAX
APPEALS BY THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

To the Honorable, The Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Wilson Brothers and Company (properly entitled Wilson Bros. & Co.), your petitioner, pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code respectfully petitions this Honorable Court to review the decision of the United States Board of Tax Appeals entered on the 6th day of August, 1940, and finding deficiencies in income tax, together with additional

tax under Section 104 of the Revenue Act of 1932 and a negligence penalty under Section 293(a) of said Act in the total of \$3,482.68 for the taxable calendar year 1932 and in the total of \$16,510.97 for the taxable calendar year 1933. [29]

I

Jurisdiction

Your petitioner is a corporation organized under the laws of the State of Nevada, having, during the taxable years involved, its principal office and place of business in the City and County of San Francisco, State of California. Petitioner timely filed its Federal income tax returns in respect to which the aforementioned tax liabilities arose with the Collector of Internal Revenue, 1st District of California, located in the City and County of San Francisco, State of California, which is situated within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

II

Prior Proceedings

The Commissioner of Internal Revenue, by his letter dated December 30, 1935, asserted a deficiency in petitioner's tax liability for the year 1932 in the sum of \$11, 343.36 and a penalty of five percentum in the amount of \$567.17, he also asserted a deficiency in petitioner's tax liability for the year 1933 in the sum of \$22,078.01 and a penalty of five per centum in the amount of \$1,103.90. By his letter of March 8, 1938, the Commissioner asserted a

deficiency in petitioner's tax liability for the year 1934 in the sum of \$13,632.27 and a penalty of five percentum in the amount of \$681.61.

Thereafter, and within the times prescribed by law, the petitioner filed with the United States Board of Tax Appeals its petitions under the aforesaid two letters requesting the redetermination of such deficiencies. The proceedings duly came on for hearing on June 6, 1939, at which time the two proceedings were [30] consolidated for hearing. The proceedings were submitted to the Board upon a written stipulation of facts, oral testimony of witnesses and documentary evidence applicable to the two proceedings.

Thereafter, and on May 22, 1940, the United States Board of Tax Appeals made its report and rendered a memorandum opinion, through a single member sitting as Division No. 4 of said Board, approving in part the determinations of the Commissioner.

Thereafter, and on August 6, 1940, decisions were made and entered in each of the two proceedings by the United States Board of Tax Appeals whereby final orders of redetermination of deficiencies for the respective years involved were made and entered as follows:

Year	Normal Tax	Additional Tax Under Section 104, 1932 Act and Section 102		Penalty
		1934 Act		
1932	None	\$	3,316.84	\$165.84
1933	\$1,499.93		14,224.80	786.24
1934	1,912.05		9,740.70	582.63

III

Statement of the Nature of the Controversy

This proceeding is for the years 1932 and 1933, (Docket No. 83,397) and involves income taxes, together with surtax alleged under the provisions of Section 104 of the Revenue Act of 1932 and a five per centum penalty for asserted negligence under Section 293 (a) of said Act, for the taxable calendar years 1932 and 1933.

The controversy between petitioner (appellant before the Court) and the Commissioner of Internal Revenue involves several issues which, for the years involved, will be presented in the order in which they are discussed in the report or memorandum opinion of [31] the Board of Tax Appeals.

1.(Issue IV (a) in the report or memorandum opinion) Whether the basis for depreciation of petitioner's 75% interest in the steamship "Idaho" adjusted to January 1, 1932 is \$52,466.67 as determined in the memorandum opinion, or \$91,466.67. This issue is one of law and arises from the difference between the cost (\$40,000) of said interest to Henry Wilson and its value \$79,000) on February 6, 1917 when he made a gift thereof to his wife, Mary H. Wilson, who in turn made a gift thereof to petitioner on January 2, 1929.

2. (Issue V in the report or memorandum opinion). Whether the petitioner corporation was availed of during the taxable years involved for the purpose of preventing imposition of surtax upon

its two shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.

3. (Issue VI in the report or memorandum opinion) Whether the petitioner was subject to the five per centum negligence penalty under Section 293(a) of the Revenue Act of 1932.

Due in part to the fact that the report or memorandum opinion of the Board subdivides its findings as it subdivides its opinion on the several issues, thereby disregarding findings of fact made on some issues material to other issues, a consideration of the evidence as well as a consideration of all of the facts found is necessarily involved in the review of the Board's decision.

IV

ASSIGNMENTS OF ERROR.

In assigning the errors which petitioner believes to have been committed by the United States Board of Tax Appeals, [32] assignment is made in the order in which the issues were decided and numbered in the report or memorandum opinion of the Board entered May 22, 1940, for the two proceedings docketed and numbered 83,397 and 93,668. For convenience of reference, the issues as considered in the report or memorandum opinion are designated by the Roman numerals, employed in subdividing said report or memorandum opinion into separate parts. No assignments of error are made to issues I and II considered in said report or memorandum opinion.

Petitioner assigns as error the following acts and omissions of said United States Board of Tax Appeals:—

III.

(1) The failure to find and determine that the \$43,276.06 account receivable due from the Woodhead Lumber Co. of California was impaired during the year 1934 in at least the amount (\$5,000.00) charged off by petitioner in said year against said account as a partial bad debt.

(2) The failure to find and determine that petitioner had fully met its burden of proving error on the part of the respondent in disallowing the claimed deduction of such partial bad debt, such disallowance being predicated entirely on the false assumption that no direct write-off had been made of said \$5,000.

(3) The making of a purported finding of fact contrary to the evidence, record and issue involved is as follows:

“Upon consideration of the entire record we find and determine that the alleged worthless character of the debt from the Woodhead Lumber Co. of California has not been shown. We therefore find and hold that the Commissioner did not err in disallowing the \$5,000 deduction claimed.” [33]

(4) The failure to find that the cost to petitioner of its bonds of the Kentucky Fuel Gas Corporation were impaired during the year 1934 in at least the amount (\$5,500.00) charged off by peti-

tioner in said year against the cost of said bonds as a partial bad debt.

(5) The failure to find and determine that petitioner had fully met its burden of proving error on the part of respondent in disallowing the claimed deduction of such partial bad debt, such disallowance being entirely predicated entirely on the false assumption that no direct write-off had been made of said \$5,000.

(6) The making of a purported finding with respect to the deduction of said \$5,500 contrary to the evidence, record and issue involved as follows:

“Obviously such a record does not show error on the part of the Commissioner in denying the deduction.”

IV

(7) The failure to allow as a basis for depreciation on the Steamship “Idaho” from January 1, 1932, the amount of \$91,377.78 and to determine that petitioner was entitled to deduct depreciation on said steamship for each of the taxable years 1932, 1933 and 1934 in the amount of \$6,100.77 per annum.

(8) The failure to allow as a part of the basis of depreciation of the Steamship “Idaho” from January 1, 1932, the amount of \$79,000. as the fair market value of a twenty per cent interest therein given to Mary H. Wilson on February 6, 1917, by her husband, at which time said steamship had a fair market value of \$395,000., which said twenty

per cent interest was donated to petitioner by said Mary H. Wilson on January 2, 1929. [34]

(9) The determination that the basis (unadjusted) of property acquired by gift prior to December 31, 1920 is changed from the value at the time of said gift to cost to the donor of said gift when said property is made the subject matter of a gift by said donee after December 31, 1920.

V

(10) The making of a purported finding with respect to all of the taxable years involved and without discrimination between the circumstances and facts relating to each of the years 1932, 1933, and 1934, to the effect:

“We hold that the petitioner was availed of in the taxable years for the purpose of preventing imposition of surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.”

when in fact the record and that part of the record considered in the report or memorandum opinion with respect to such finding is contrary to such finding and said finding is inconsistent with other findings upon which it is purportedly based.

(11) The determination that for the taxable year 1932 petitioner is liable under the alleged authority of Section 104 (a) of the Revenue Act of 1932 in the amount of \$3,316.84 as a surtax for the alleged accumulation of surplus contrary to the provisions of said section.

(12) The determination that for the taxable year 1933 petitioner is liable under the alleged authority of Section 104(a) of the Revenue Act of 1932 in the amount of \$14,224.80 as a surtax for the alleged accumulation of surplus contrary to the provisions of said section. [35]

(13) The determination that for the taxable year 1934 petitioner is liable under the alleged authority of Section 102(a) of the Revenue Act of 1934 in the amount of \$9,740.70 as a surtax for the alleged accumulation of surplus contrary to the provisions of said section.

(14) In making the determinations complained of in assignments 10 to 13 hereof, inclusive, the failure to consider the true earned surplus of petitioner as distinguished from its taxable earnings and profits as determined in the report or memorandum opinion.

(15) In making the determinations complained of in assignments 10 to 13 hereof, inclusive, the failure to make any finding as to what surplus, if any, petitioner had accumulated in each of the taxable years involved.

VI

(16) The determination that for the taxable year 1932 petitioner is liable for a negligence penalty under the alleged authority of Section 293(a) of the Revenue Act of 1932 in the amount of \$165.84, when the record does not disclose that any part of the deficiency determined was "due to negligence or intentional disregard of rules and regulations".

(17) The determination that for the taxable year 1933 petitioner is liable for a negligence penalty under the alleged authority of Section 293(a) of the Revenue Act of 1932 in the amount of \$785.24, when the record does not disclose that any part of the deficiency determined was "due to negligence or intentional disregard of rules and regulations".

(18) The determination that for the taxable year 1934 petitioner is liable for a negligence penalty under the alleged authority of Section 293(a) of the Revenue Act of 1934 in the amount of \$582.63, [36] when the record does not disclose that any part of the deficiency determined was "due to negligence or intentional disregard of rules and regulations".

General

(19) The failure to make comprehensive and generally applicable findings of facts which would apply equally to all issues involved in the proceedings and be adequate for proper determination of all the issues involved.

(20) The setting forth separately in the report or memorandum opinion in connection with the discussion and determination of each of the issues involved therein of inadequate facts to support the conclusions reached in such opinion on the majority of said issues.

(21) The severance of facts in the relation to each of the issues discussed and determined in the report or memorandum opinion so that purported

findings with regard to one issue do not have application to the other issues involved.

(22) The determination of separate issues without regard to facts found to be true with respect to other issues involved in the proceedings.

(N. B. The errors numbered 19, 20, 21, and 22 are manifest from a reading of the report or memorandum opinion on the various numbered issues and from the following express language of the opinion:

“Certain issues as to depreciation upon wooden buildings and automobiles have been settled by stipulation which will be reflected in decision under Rule 50. The other issues will be considered in the order above set forth, the facts, except the general facts as to incorporation stated above, being set forth separately in connection with the discussion of each issue.” (*Italics supplied.*) [37]

(23) The intermingling of findings of fact, conclusions as to facts and conclusions of law in such manner as to render the decision of the Board in its report or memorandum opinion arbitrary and theoretical.

(24) In making its findings of fact and conclusions of law therefrom the Board failed to make findings of fact in conformance with the evidence.

Wherefore, the petitioner prays that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of

the record be prepared in accordance with law and the rules of said Court for filing, and that appropriate action be taken to the end that the errors complained of herein be reviewed and corrected by said Court.

WILSON BROS. & CO.,
By FRANCIS A. WILSON
President.

ADOLPHUS E. GRAUPNER,
LOUIS JANIN
Counsel for Petitioner
1110 Balfour Building,
San Francisco, California. [38]

State of California,
City and County of San Francisco.—ss.

Francis A. Wilson being first and duly sworn says, I am president of Wilson Bros. & Co., the petitioner and appellant above-named; that I have read the foregoing petition for review and know the contents thereof and the facts set forth therein are true as I verily believe; that said petition is filed in good faith and not for purposes of delay.

FRANCIS A. WILSON

Subscribed and sworn to before me this 24th day of October, 1940.

[Seal] ELEANOR J. SMITH
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Dec. 31, 1943.

[Endorsed]: U.S.B.T.A. Filed Oct. 31, 1940. [39]

[Title of Board and Cause.]

Docket No. 83,397

AFFIDAVIT OF SERVICE BY MAIL

Louis Janin, being first duly sworn, deposes and says:

That he is a citizen of the United States, and over the age of 21 years, and not a party to the above-entitled proceedings. That on this 30th day of October, 1940, he deposited in the United States Post Office in San Francisco, California, addressed to the Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C., a copy of petition for review in the above-entitled proceedings, together with a notice of mailing petition for review, addressed to said Commissioner of Internal Revenue, and to John P. Wenchel, Chief Counsel, Attorney for Commissioner. That said copy of petition and notice of filing petition were enclosed in an envelope addressed to the Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C., with air mail postage prepaid thereon for immediate and prompt delivery.

LOUIS JANIN

Subscribed and sworn to before me this 30th day of October, 1940.

[Notarial Seal] EDITH VIA

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: U.S.B.T.A. Filed Oct. 31, 1940. [40]

[Title of Board and Cause.]

To Commissioner of Internal Revenue, and to John P. Wenchel, Chief Counsel, Attorney for Respondent, Bureau of Internal Revenue Building, Washington, D. C.:

You are hereby notified that on this 31st day of October 1940, a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the United States Board of Tax Appeals, heretofore rendered in the above-entitled cause, was mailed by air mail to the Clerk of said Board. A copy of the petition as filed is attached hereto, and served upon you.

Dated: This 30th day of October, 1940.

(s) ADOLPHUS E. GRAUPNER

(s) LOUIS JANIN

Attorneys for Petitioner.

Service of the foregoing notice of filing and of a copy of the petition for review is hereby acknowledged this 31st day of October, 1940.

(s) J. P. WENCHEL

Chief Counsel, Bureau of Internal Revenue

Attorney for Respondent.

[Endorsed]: U.S.B.T.A. Filed Nov. 1, 1940. [41]

[Title of Board and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY

In compliance with paragraph (d) of Rule 75 of the Rules of Civil Procedure for the District Court of the United States Board of Tax Appeals by Rule 30 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit the above-named petitioner herewith states the points on which it intends to rely on the pending petition for review of the decision of said Board in the above-entitled proceeding.

Petitioner will rely upon all of the assignments of error set forth in the petition for review of decision in the above-entitled proceedings by the United States Circuit Court of Appeals for the Ninth Circuit filed with the United States Board of Tax Appeals on October 31, 1940.

With respect to the above-entitled proceeding involving the taxable calendar years 1932 and 1933 a concise statement of the points involved in the appeal is as follows: [42]

1. The Board of Tax Appeals erred in failing to allow petitioner a valuation, as a basis for depreciation on the Steamship "Idaho" from January 1, 1932 of the amount of \$91,377.78 and to determine that petitioner was entitled to deduct depreciation on said steamship for each of the taxable years 1932, 1933 and 1934 in the amount of \$6,100.78 per annum. Such error resulted from failure to determine as a part of the basis of depreciation,

the amount of \$79,000 as the fair market value of a twenty per cent interest in said steamship given to Mary H. Wilson on February 6, 1917, and by her donated to petitioner on January 2, 1929.

2. The Board of Tax Appeals erred in finding with respect to all the taxable years involved, viz: 1932, 1933 and 1934, as follows:

“We hold that the petitioner was availed of in the taxable years for the purpose of preventing imposition of surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.”

and further erred in determining that for the year 1932 petitioner is liable under Section 104(a) of the Revenue Act of 1932 for \$3,316.84 as a surtax for alleged accumulation of surplus; also, it further erred in determining that for the year 1933 petitioner is liable under the aforesaid section for \$14,224.80 as a surtax for alleged accumulation of surplus.

In making such determinations the Board failed to consider petitioner's true earned surplus as distinguished from its taxable earnings and profits as determined in the report or memorandum opinion and, also, failed to make any findings as to what surplus, if any, petitioner had accumulated in each of the taxable years involved. [43]

3. The Board erred in determining that for each of the taxable years 1932 and 1933 petitioner is liable for a negligence penalty under Section 293(a)

of the Revenue Act of 1932 when the record does not disclose that any part of the deficiency determined in each of said years was "due to negligence or intentional disregard of rules and regulations."

4. The Board erred in failing to make comprehensive or general finding of facts applicable to all issues involved and further erred in segregating and separating the findings made so that findings made on one issue, although properly material and applicable to other issues, are made inapplicable to other issues to which they are material and controlling as is evidenced by the following preliminary statement in the report or memorandum opinion:

"Certain issues as to depreciation upon wooden buildings and automobiles have been settled by stipulation which will be reflected in decision under Rule 50. The other issues will be considered in the order above set forth, *the facts*, except the general facts as to incorporation stated above, *being set forth separately in connection with the discussion of each issue.*"
(Italics supplied.)

The Board further erred in failing to make findings of fact in conformance with the evidence, and in intermingling, as findings of fact, facts, conclusions as to facts, and conclusions of law in such manner as to conflict with the record and the law.

ADOLPHUS E. GRAUPNER
LOUIS JANIN

Attorneys for Petitioner.

Admission of service of the foregoing statement of points on which petitioner intends to rely is hereby admitted this 11th day of March, 1941.

J. P. WENCHEL

Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent on Review.

[Endorsed]: U.S.B.T.A. Filed Mar. 11, 1941. [44]

U. S. Board of Tax Appeals Filed March 14, 1941

In The United States Circuit Court of Appeals
For the Ninth Circuit

B. T. A.

Docket No. 83397

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.,) a corporation,
Petitioner on Review,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

B. T. A.

Docket No. 93668

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.,) a corporation,
Petitioner on Review,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

ORDER FOR CONSOLIDATION OF
THE RECORD

Upon consideration of the motion filed herein by counsel for the petitioner on review in the above-entitled proceedings, moving the Court to consolidate said proceedings for purposes of record, briefing, hearing and decision, and for other purposes, it is this 10th day of March, 1941

Ordered that the said motion be and it is hereby granted.

And it is further ordered that a certified copy of [45] the motion and this order be transmitted by the Clerk of this Court to the Clerk of the United States Board of Tax Appeals.

(s) CURTIS D. WILBUR

U. S. Circuit Judge.

[Endorsed]: Filed March 10, 1941. Paul P. O'Brien, Clerk.

A true copy

Attest: March 10, 1941

[Seal] PAUL P. O'BRIEN

Clerk.

By FRANK A. SCHMID,

Deputy Clerk

[Endorsed]: U.S.B.T.A. Filed March 14, 1941.

[46]

[Title of Board and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

In compliance with the provisions of paragraph (a) of Rule 75 of the Rules of Civil Procedure for the District Courts of the United States as made applicable to review of a decision of the United States Board of Tax Appeals by Rule 30 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, the above-named petitioner hereby designates the portions of the record,

proceedings, and evidence to be contained in the record on review of the above-entitled proceedings, as follows:

1. Docket entries of the proceedings before the Board of Tax Appeals.

2. Motion for order and order granting leave to file amended petition.

3. Amended petition filed July 10, 1939.

4. Answer to amended petition filed July 31, 1939. [47]

5. Stipulation of facts filed in the proceeding, excepting therefrom copies of bills of sale of enrolled vessels attached thereto and referred to as Exhibits A and B to said stipulation.

6. Findings of fact and memorandum opinion of the Board promulgated May 22, 1940.

7. Decision of the Board of Tax Appeals entered August 6, 1940.

8. Petition for Review of Decision of the Board by the United States Circuit Court of Appeals for the Ninth Circuit, filed October 31, 1940.

9. Notice of filing of petition for review and admission of service thereof.

10. Orders enlarging time for preparation, transmission and delivery of the record.

11. Revised Statement of the Evidence.

12. Designation of contents of record on appeal.

13. Statement of Points on which petitioner intends to rely.

14. Petitioner's Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11, 18, 19, 20, 21, 22 and 23 and Respondent's Exhibits A, B and C.

15. Order of the United States Circuit Court of Appeals, Ninth Circuit, for consolidation of the record.

ADOLPHUS E. GRAUPNER
LOUIS JANIN

Counsel for Petitioner,
1110 Balfour Building,
San Francisco, California.

Service of the foregoing designation of the contents of record on appeal is hereby admitted and agreed to this day of March, 1941.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent on Review.

[Endorsed]: U. S. B. T. A. Filed March 11, 1941.

[48]

[Title of Board and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 48, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of

Tax Appeals, at Washington, in the District of Columbia, this 20th day of March, 1941.

[Seal] B. D. GAMBLE

Clerk,

United States Board of Tax Appeals.

[49]

[Endorsed]: No. 9782. United States Circuit Court of Appeals for the Ninth Circuit. Wilson Brothers and Company (Wilson Bros. & Co.,) a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed March 31, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In The United States Circuit Court of Appeals
For the Ninth Circuit

No. 9782

B. T. A.

Docket No. 93668

WILSON BROTHERS AND COMPANY,
(Wilson Bros. & Co.,) a corporation,
Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

NOTICE OF ADOPTION OF DESIGNATION
OF CONTENTS OF RECORD AND STATE-
MENT OF POINTS FILED WITH THE
BOARD OF TAX APPEALS.

To the Honorable Justices of the United States
Circuit Court of Appeals for the Ninth Circuit:

Notice is hereby given that the Petitioner on
Review in the above entitled proceedings hereby
adopts for the purposes of petition on review to the
above entitled court, the Designation of contents
of Record and Statement of Points filed with the
Clerk of the United States Board of Tax Appeals
in the above numbered proceedings on March 11,
1941.

Dated this 16th day of April, 1941.

ADOLPHUS E. GRAUPNER

LOUIS JANIN

Attorneys for the Above Named
Petitioner.

[Endorsed]: Filed April 17, 1941. Paul P.
O'Brien, Clerk.

